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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~248~~ 37

ANNIE KNOTTS, CARRIE KNOTTS, AND EDWIN KNOTTS, INFANTS, BY THEIR NEXT FRIEND, EMILY J. KNOTTS, APPELLANTS,

vs.

FRANKLIN STEARNS, EXECUTOR OF C. J. BALDWIN, DECEASED, VIRGINIA V. BALDWIN, AND MARY F. BALDWIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED OCTOBER 14, 1873.

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No. 248.

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VS.

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1 In the circuit court of the United States for the eastern district of Virginia, at Richmond, in said district, on Thursday, May 15th, 1873.

Present, Hon. Hugh L. Bond, judge.

Style of suit.

ANNIE KNOTTS, CARRIE KNOTTS, AND EDWIN Knotts, infants under the age of twenty-one years, who sue by Emily J. Knotts, their mother and next friend, complainants, *against* FRANKLIN STEARNS, EXECUTOR OF C. J. Baldwin, deceased, Virginia Victoria Baldwin, and Mary Francis Baldwin, defendants.	No. 198.	In equity.

Be it remembered that heretofore, to wit, on the 14th day of September, 1872, came the complainants, by counsel, and filed a copy of the record of the chancery court of the city of Richmond in the above-entitled cause, which record is in the words and figures following, to wit:

2 RECORD OF THE CHANCERY COURT OF THE CITY OF RICHMOND.

Record of the chancery court of the city of Richmond.

VIRGINIA:

Pleas before the honorable Edward H. Fitzhugh, judge of the chancery court of the city of Richmond.

Be it remembered that heretofore, to wit, on the first day of January, in the year 1870, came Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, by Emily J. Knotts, their best friend, into the circuit court of the city of Richmond, and sued out a summons in chancery against C. J. Baldwin, which summons and the return of the sheriff endorsed thereon are in the words and figures following, to wit:

Summons.

Summons.

The commonwealth of Virginia to the sheriff of the city of Richmond, greeting:

You are hereby commanded to summon C. J. Baldwin to appear at the clerk's office of our circuit court of the city of Richmond, at the rules to be holden for the said court, on the first Monday in January inst., to answer a bill in chancery exhibited against him in our said court by
3 Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, by Emily J. Knotts, their next friend, and have then there this writ.

Witness, Thomas S. Atkins, clerk of our said court at Richmond, the 1st day of January, 1870, and in the 94 year of the commonwealth.

THO'S S. ATKINS.

Return.

(Endorsed:) Executed Jan'y 3d, 1870, on Cha's J. Baldwin, by delivering to him a copy of the within.

J. H. BUGLESTON, *D. S.*,
For A. B. THOMPSON, *S. C. R.*

Rule.—Decree nisi.

And afterwards, to wit, at rules held in the clerk's office of the said circuit court of the city of Richmond, on the first Monday in January, 1870, came the said plaintiffs and filed their bill; and the said C. J. Baldwin, having been duly served with process, and not appearing to plead, answer, or demur to the said bill, on the motion of the said plaintiffs, by counsel, it was ordered that unless he shall appear at the rules to be holden on the last Monday in January, 1870, and plead, answer, or demur to the said bill, the same will be taken for confessed as to him.

New process issued.

And at the same rules a new process of summons to answer the said bill was issued, returnable *to* the last Monday in January, 1870, which said summons and said bill, and the exhibits therewith filed, are in the words and figures following, to wit:

New summons.

4 Summons.

The commonwealth of Virginia to the sheriff of the city of Richmond, greeting:

You are hereby commanded to summon Emily J. Knotts & Stephen Bowis to appear at the clerk's office of our circuit court of the city of Richmond, at the rules to be holden for the said court, on the last Monday in January next, to answer a bill in chancery exhibited against them, & another in our said court, by Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, by Emily J. Knotts, their next friend, and have then there this writ.

Witness, Thomas S. Atkins, clerk of our said court at Richmond, the 8th day of January, 1870, and in the 94 year of the commonwealth.

THO'S S. ATKINS.

Return.

(Endorsed:) Emily J. Knotts and Stephen Bowis not found; are non-residents.

J. H. BUGLESTON, *D. S.*,
For A. B. THOMPSON, *S. C. R.*

Bill.

Bill.]

To the honorable judge of the circuit court of the city of Richmond:

Complaining, shew unto the court your complainants, Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twen-
5 ty-one years, by Emily J. Knotts, their next friend, that your

complainants are the children and heirs-at-law of the late Edwin Knotts, who died seized of real estate lying in the city of Richmond, fronting on the north side of Franklin street, between 27th & 28th streets, and running back between parallel lines one hundred and sixty-five feet, more or less, with a dwelling-house and other improvements thereon; that your complainants are rightfully entitled to the real estate of which the said Edwin Knotts died seized, subject to the dower right therein of your complainants' mother, Emily J. Knotts, and that, but for proceedings now about to be referred to, your complainants would now be in possession and enjoyment of said real estate; that one Stephen Bowis, claiming to have qualified as guardian of your complainants, Annie Knotts and Carrie Knotts, in the year 1863, instituted his bill in circuit court of the city of Richmond, holding its sessions at Richmond City, as such guardian, to which bill Emily J. Knotts (your complainants' mother) and your complainants were made defendants. Your complainants learn these facts from the decree made in said suit on the 27th day of February, 1863, a copy of which is herewith filed, marked Exhibit A, and is prayed to be taken and considered as part of this bill.

6 The proceeding seems to have been designed to be a proceeding under the statute contained in the Code of Virginia, chapter 128, sec. 2, page 590, by a guardian for the sale of infants' lands. The bill itself is lost, having probably been destroyed at the fire of April 3, 1865, which destroyed the State court-house in the city of Richmond. Whether the bill was verified by oath, as required by that statute, your complainants do not know. Being infants then and infants now, they require strict proof thereof, and strict proof as well of a compliance with every requirement of the statute. It is apparent from the naming of the parties mentioned in the said decree of 27th February, 1863, and the subsequent decrees hereafter referred to, that the requirement of the statute, that all who would be heirs of the infant defendants in case of their death should also be made parties, was not complied with. The said real estate descending to your complainants from their father, had they died under age would have inherited the said real estate, and they should have been made parties to the said suit. Had they been, the mischief hereafter complained of would not possibly have happened. The suit was in this defection, and your complainants insist that for this defect alone, were there no other, the sale subsequently directed and made, and the conveyance to C. J. Baldwin, hereinafter mentioned, should be set aside and annulled.

7 On the filing of the bill thus imperfectly presenting the case before the court, the decree aforesaid of February 27th, 1863, was made, directing an inquiry before a commissioner as to the fee-simple and annual value of the real estate mentioned in the bill, and "whether the interest of the infant owners thereof would be promoted by a sale of said estate, and whether the rights of any person would be violated by such sale."

At the time of filing the said bill and of the said decree of inquiry, your complainant, Edwin Knotts, was not in being, so quick was the guardian of his sisters to discover that the real estate of which their father died seized should be sold. The decree of March 13th, 1863, followed this, referring to a commissioner's report and confirming the same, and directing the said real estate to be sold, after giving ten days' notice, cash as to $\frac{1}{4}$ and the remaining three-fourths on a credit of six, twelve, and eighteen months from the day of sale; or the purchaser might pay the whole in cash; and from the proceeds of the sale the

commissioner was first to pay expenses of sale, costs, and expenses of suit, and then to invest "in bonds or stock of the Confederate States of America, or of any State belonging to the confederacy known as the Confederate States, or of the city of Richmond; one-third of the surplus for the benefit of Mrs. Emily J. Knotts, widow of Edwin Knotts, during her life, and the other two-thirds to be invested in like
8 manner in the name of Stephen Bowis, guardian of Annie Knotts and of Carrie Knotts. For these and other provisions of the said decree special reference is hereby made thereto, a copy of which is herewith filed, marked Exhibit B, and is prayed to be taken and considered as part of this bill.

In May, 1863, by the decree of the 5th of that month, it appears that a supplemental bill was filed, and thereupon the cause came on to be heard on the papers formerly read, the report of the sale by the commissioner, the supplemental bill, &c., and the court ordered the commissioner to convey by deed the said real estate to C. J. Baldwin. The decree contained other special provisions, to which reference is hereby made. A copy of the said decree is herewith filed, marked Exhibit C, and is prayed to be taken and considered as part of this bill.

The decree of January 7th, 1864, was made after the birth of your complainant, Edwin Knotts, and there was neither guardian ad litem nor any other guardian protecting his interests in the said suit. This decree directs the manner in which the interest on the confederate bonds should be applied, and special reference is hereby made thereto. A copy of the said decree is herewith filed, marked Exhibit D, and is prayed to be taken and considered as part of this bill.

9 Your complainants are advised that all the said decrees hereinbefore recited were illegal and without due and proper authority, and that no title whatever passed to the said C. J. Baldwin by virtue of the conveyance in said decrees mentioned; that the said decrees should be set aside, vacated, and annulled, and that the conveyance to the said C. J. Baldwin of said real estate, a copy of which conveyance is herewith filed, marked Exhibit E, and is prayed to be taken as part of this bill, should also be set aside, vacated, and annuled. And your complainants now allege and set forth as reasons for setting aside, vacating, and annulling the said several decrees, and the conveyance as aforesaid to said Baldwin, the following:

1. The bill and proceedings in said suit, if designed to be proceedings under the statute hereinbefore referred to, were irregular in not making parties defendant, and in not conforming to other provisions of the said statute.

2. The court which made such decrees and directed such conveyance was not a court of competent jurisdiction, and was not authorized by law to make such decrees and order, and direct such conveyance.

10 3. It was not competent for the said court to decree the sale of the said real estate and direct the investment of the proceeds in confederate bonds. Such direction was in direct aid of the rebellion then waging against the Government of the United States, and has been repeatedly declared by the United States courts to be illegal, contrary to public policy, and void.

4. Your complainants allege that the said C. J. Baldwin did not pay to the commissioner who made the sale good and lawful money of the United States, but paid him confederate treasury notes and illegal currency, and no right accrued to the said Baldwin under such payment, and this was specially true when the said Baldwin knew at the time of

such payment that the decree under which the commissioner was acting directed the said confederate treasury notes to be invested in confederate bonds.

5. There was no guardian of your complainant, Edwin Knotts, in the said suit.

6. It was plainly not to the interest of the infant defendants, your complainants, to sell their property and invest the proceeds in confederate bonds, and the court should have refused to decree the sale, and the purchaser, Baldwin, purchasing under said decree, was bound to look to this, and to run the hazard of the inquiry being opened again.

11 7. It does not appear that either of the bills or of the answers was sworn to.

Your complainants are entitled to their father's property of which he died seized, and they submit that a court of equity will not permit their rights in the premises thus to be frittered away and themselves deprived of the little patrimony left them by their parent.

The said sale should not have been made at all, but if made it should have been made for good and lawful money of the United States, and the proceeds ought to have been invested in such a manner as would have insured to your complainants their enjoyment of the same. As it is, the little their father has left them is in the enjoyment of Mr. C. J. Baldwin, and they are without a home and penniless.

Your complainants are advised that all this is contrary to equity and good conscience. In tender consideration whereof, and forasmuch as your complainants are remediless in the premises, save by a court of equity, where matters of this kind are alone and properly cognizable, your complainants pray that C. J. Baldwin and Emily J. Knotts and the said Stephen Bowis may be made parties defendant to this bill, and required to answer the several statements hereof on oath; that

12 proper process issue; that proper orders and decrees may be made; that the said several decrees hereinbefore referred to may be set aside, vacated, and annulled; and that the said conveyance to C. J. Baldwin may be set aside, vacated, and annulled, and your complainants put in possession of the real property of which the said Edwin Knotts died seized; that full and ample relief be granted your complainants by personal decrees against the said C. J. Baldwin, if necessary, and that such other further and general relief may be afforded your complainants as the nature of their case may require or to equity shall seem meet. And your complainants will ever pray, &c.

STEGER, WILLIAMS & SANDS, *P. Q.*

EXHIBIT A.

VIRGINIA:

In the circuit court of the city of Richmond, Feb'y 27th, 1863.

Order of court of Feb'y 27th, 1863.

STEPHEN BOWIS, GUARDIAN OF ANNIE & Carrie Knott, pl't',
against
EMILY J. KNOTTS, ANNIE KNOTTS, AND CARRIE Knotts—the last two are infants under the age of twenty-one years—d'f'ts. } Exhibit A.

This day came the plaintiff, by his counsel, and filed his bill against the defendants, and on his motion Benjamin Pollard was appointed guardian ad litem of the infant defendants to defend them in this

13 suit, and the said infant defendants, by their guardian ad litem aforesaid, and the adult defendant, by her counsel, thereupon filed their answers to the said bill, to which answers the plaintiff replied generally; and the cause being docketed, by consent of all the parties by counsel, came on by like consent to be heard on the said bill, answers, and replications, and was argued by counsel. On consideration whereof the court doth adjudge, order, and decree that one of the commissioners of this court do enquire and ascertain what is the fee-simple and what the nett annual value of the real estate mentioned in the bill of which Edwin Knotts died seized, whether the interest of the infant owners thereof would be promoted by a sale of said estate, and whether the rights of any person would be violated by such sale, and report forthwith to the court the result of his inquiries, and a special statement as to any matter deemed pertinent by himself or which he may be required by any party so to state.

A copy. Teste:

THO'S S. ATKINS, *Clk.*

EXHIBIT B.

VIRGINIA:

In the circuit court of the city of Richmond, March 13th, 1863.

14 STEPHEN BOWIS, GUARDIAN OF ANNIE and Carrie Knotts, pl't'f,
against
EMILY J. KNOTTS, ANNIE KNOTTS, AND CARrie Knotts—the last two of whom are infants under the age of twenty-one years—by Benjamin Pollard, their guardian ad litem, appointed by the court to defend them in this suit, def'ts. } Exhibit B.

Order of court, March 13, 1863.

This cause came on this day to be again heard on the papers formerly read and proceedings had herein, and upon the report of Commissioner Evans, under the decree herein pronounced on the 27th day of February, 1863, to which report there is no exception, and was argued by counsel. On consideration whereof the court doth approve and confirm the said report, and doth adjudge, order, and decree that David Parr, who is hereby appointed a commissioner for the purpose, and who consents to act as such without compensation, do sell at public auction, on the premises, the real estate in the bill mentioned, of which Edwin Knotts died seized, after giving not less than ten days' notice of the sale in two newspapers published in the city of Richmond. The terms of sale shall be one-fourth in cash, the remaining three-fourths upon a credit of six, twelve, and eighteen months, respectively, with legal interest from the day of sale, the purchasers giving negotiable notes for deferred payments, and the title to be retained until all the purchase-money
15 be paid and a conveyance directed by the court, or the purchaser, at his option, may pay the whole purchase-money in cash. Out of the proceeds of sale the said David Parr, commissioner, shall first pay all expenses thereof and the costs and expenses of this suit, and shall then invest in bonds or stock of the Confederate States of America, or of any State belonging to the confederacy known as the Confederate States, or of the city of Richmond, one-third of the surplus for the

benefit of Mrs. Emily J. Knotts, widow of Edwin Knotts, during her life, and shall in like manner invest, respectively, the remaining two-thirds of said surplus in the name of Stephen Bowis, guardian of Annie Knotts and of Carrie Knotts, not transferable except by order of a court of competent jurisdiction, respectively, and deliver the evidence of said investment for said infants to said guardian, and return the evidence of his investment for the widow aforesaid to this court, and return also report of his proceedings under this decree.

But the said David Parr shall not have power to act herein until he shall enter into a bond, with security, before the clerk of this court, in a penalty of eight thousand dollars, with condition according to law.

A copy. Teste:

ALFRED SHEILD, *D. C.*

16 EXHIBIT C.

VIRGINIA:

In the circuit court of the city of Richmond, May 5th, 1863.

STEPHEN BOWIS, GUARDIAN OF ANNIE AND Carrie Knotts, pl't'f,
against
EMILY J. KNOTTS, ANNIE KNOTTS, AND CARRIE Knotts—the last two of whom are infants under the age of twenty-one years—by Benjamin Pollard, guardian ad litem, appointed by the court to defend them in this suit, def'ts. } Exhibit C.

Order of court of May 5, 1863.

This day came the plaintiff, by counsel, and, with the leave of the court, filed a supplemental bill herein, and the adult defendant, by counsel, and the infant defendants, by their guar*guar*dian ad litem, filed their answers to the said supplemental bill, to which answers the plaintiff, by counsel, replied generally; and thereupon this cause came on to be again heard on the papers formerly read, the report of David Parr, commissioner herein appointed by the decree pronounced on the 13th day of March, 1863, to which there is no exception, and the said supplemental bill and answers thereto, with the replications to the said answers, and was argued by counsel. On consideration whereof the court doth approve and confirm the said report, and doth adjudge, order, and decree that David Parr, as commissioner herein, do convey by deed,
17 with special warranty, into C. J. Baldwin, his heirs or assigns, the real estate purchased by him as in the said report mentioned; and it now appearing that Mrs. Emily J. Knotts, the widow of Edwin Knotts, deceased, was left enciente by him at his death, the court doth further order that the confederate bonds returned with the said report be safely filed by the clerk among bonds for money loaned, and that David Parr, as commissioner herein, do collect the interest accruing in July next, and pay to Mrs. Emily J. Knotts the interest on the bond for forty-five hundred dollars invested for her benefit, and to Stephen Bowis, guardian of Annie & Carrie Knotts, the interest on the nine thousand dollars invested in his name as commissioner, and do report to the court his proceedings herein, and do also report whether a living child has

been born to Mrs. Emily J. Knotts, as contemplated in the supplemental bill, and the name of said child, in order to a further decree and proceedings herein.

A copy. Teste:

ALFRED SHEILD, *D. C.*

EXHIBIT D.

VIRGINIA:

In the circuit court of the city of Richmond, January 7th, 1864.

18 STEPHEN BOWIS, GUARDIAN OF ANNIE and Carrie Knotts, pl'ff's,
against
EMILY J. KNOTTS, ANNIE KNOTTS, AND CARRIE Knotts—the last two of whom are infants under the age of twenty-one years—by Benjamin Pollard, their guardian ad litem, appointed by the court to defend them in this suit, def'ts. } Exhibit D.

Order of court of Jan'y 7, 1864.

This cause came on this day to be again heard on the papers formerly read and the proceedings had herein, and upon the report of David Parr, commissioner, made under the decree herein rendered on the 5th day of May, 1863, to which report there is no exception, and was argued by counsel. On consideration whereof the court doth approve and confirm the said report, and doth adjudge, order, and decree that said David Parr, as commissioner, do collect the interest now accrued, or hereafter to accrue, on the confederate bonds filed in this cause, and do pay the interest on the bond for $9,000 in proportion and manner as follows, to wit, one-third to the duly qualified guardian of Annie Knotts, one-third to the duly qualified guardian of Carrie Knotts, and one-third to the duly qualified guardian of Edwin Knotts, the child born since the death of his father, and do pay the interest on the bond for $4,500 to Mrs. Emily J. Knotts during her life, and from and after her death do pay the said interest to her three children aforesaid, or their guardians, in proportion and manner aforesaid.

And it not appearing that anything more remains to be done
19 in this cause, it is ordered to be removed from the docket, subject to be re-instated on motion of any party interested and for good cause shown.

A copy. Teste:

ALFRED SHEILD, *D. C.*

Rule pro confesso as to Baldwin.

And afterwards, to wit, at rules held in the clerk's office of the said court on the last Monday in January, 1870, the defendant, C. J. Baldwin, having been duly served with the process of summons issued in this suit, and at the last rules a decree nisi having been entered against the said C. J. Baldwin, and he still failing to appear and plead, answer, or demur to the bill of the plaintiffs, on the motion of the said plaintiffs, by counsel, it is ordered that said bill be taken for confessed as to the said defendant, Baldwin.

And at another day, to wit, at a circuit court of the city of Richmond, held on the 11th day of February, 1870—

Answer of Baldwin, filed by leave of court.

This day came the defendant, C. J. Baldwin, and, with the leave of the court, filed his answer to the bill of the plaintiffs, to which answer the plaintiffs, by counsel, replied generally; which answer of C. J. Baldwin and the exhibits therewith filed are in the words and figures following, to wit:

In the circuit court of the city of Richmond.

Answer of Baldwin.

20 The answer of C. J. Baldwin to a bill of complaint exhibited against himself and others, in the circuit court of the city of Richmond, by Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, sueing by Emily J. Knotts, their next friend.

This defendant, saving and reserving to himself the benefit of exception to the many errors and imperfections of said bill, for answer thereto, or to so much thereof as he is advised it is material for him to answer, answering, says: That it is true that he became the purchaser of the real estate in the bill mentioned. He purchased the said real estate on the 5th day of April, 1863, at public auction on the premises, at a sale thereof made by Daniel Parr, commissioner in the chancery suit of Bowis, guardian, vs. Knotts & als, then pending in the circuit court of the city of Richmond. This defendant paid for the said property the sum of thirteen thousand eight hundred dollars in cash in the currency of that day, to wit, Confederate States treasury notes, and on the 21st day of May, 1863, the said real estate was conveyed to him by said David Parr, commissioner as aforesaid, in pursuance of a decree entered in said chancery suit on the 5th day of May, 1863, confirming the sale aforesaid, and directing, among other things, conveyance of said real estate to be made to this defendant.

The original deed made by said Parr, as commissioner, to this
21 defendant, in pursuance of said decree, is herewith filed, marked Exhibit L, and prayed to be taken as part of this answer.

This defendant denies that the bill and proceedings in the chancery suit aforesaid, in which this real estate was decreed to be sold, was irregular in any respect whatever, or that all persons proper to be made parties were not so made, or that any provision of the statute by virtue of which such sale was made was not strictly conformed to. On the contrary, this defendant avers that all proper parties were made both plaintiffs and defendants to said bill, and that all the proceedings in said suit were in every respect regular, and that throughout said suit every statutory provision and every other requirement of the law was fully complied with.

This defendant denies that the circuit court of Richmond, which made such decree and directed such conveyance, was not a court of competent jurisdiction, and was not authorized by law to make such decrees and orders and direct such conveyance. On the contrary, this defendant avers that the said court was a court of competent jurisdiction, and was clothed by law with the complete power to make such decrees and orders and direct such conveyance.

This defendant denies that it was not competent for the said court to decree the sale of the said real estate, and direct the investment of the

proceeds in confederate bonds. On the contrary, he avers that it was competent for the said court so to do.

22 He denies that such direction was in direct or indirect aid of the rebellion, or was, in fact, in any way whatever connected with said rebellion, or had anything whatever to do with war or politics; but he affirms that it was in the usual and ordinary course of business of the court to direct the investment of proceeds of sale, where such investments were proper, in the usual and current securities of the time and the government under whose laws the court was sitting.

This defendant denies that such investments have ever been declared, much less repeatedly declared, by the United States courts, or by any courts, to be illegal, contrary to public policy, or void.

This defendant admits that he did not pay for said land in currency of the United States, and that he did pay therefor in currency of the Confederate States; but this defendant confidently denies that this currency was illegal in Richmond, Virginia, on the 5th day of May, 1863, or at any other time during the continuance of the late war. On the contrary, this defendant affirms that said Confederate States treasury notes were the only currency then in use in Richmond, Virginia, in ordinary affairs of the community; that it was the currency of a de facto government; and that all the contracts made by citizens or subjects of that de facto government, in the usual affairs of life, upon the

23 basis of that currency and with reference thereto, and not in aid of rebellion, were valid and legal, and have been so declared by the highest judicial authority in this country, to wit, the Supreme Court of the United States, in the case of Thorington, appellant, vs. Smith & Hartley.

This defendant denies that he knew at the time of his payment that the decree under which the said sale was made directed the proceeds of sale to be made in confederate bonds. On the contrary, said decree, filed as an exhibit with the bill, shows on its face that the commissioner making the sale was directed to invest in bonds or stocks of the Confederate States of America, or of any State belonging to the confederacy known as the Confederate States, or of the city of Richmond; but this defendant denies, further, that it was at all incumbent on him to supervise or sit in judgment on or direct or control in any way the conscience, authority, or capacity of an equity court of competent jurisdiction to make such investments as seemed best to it.

This defendant denies that there was no guardian of complainant, Edwin Knotts, in said suit. On the contrary, this defendant affirms, as will be hereafter shewn, that said Edwin Knotts was a party to said suit, and that he was represented by guardian.

This defendant, further answering, denies that it was plainly not to the interest of the infant defendants of said suit (the complainants

24 in this) to sell their property and invest the proceeds in confederate bonds, and that the court should have refused to decree the sale. On the contrary, this defendant avers that it was plainly the interest of said infants to sell said land, as will be abundantly shewn hereafter, and that the court did right in decreeing said sale.

This defendant denies that, as purchaser of said land, it was incumbent on him to look to the question of whether it was to the interest of the infants to sell said land; he affirms that it was sufficient for him that the court thought so; and he denies that any inquiry into this question can now be made which can in any affect his rights.

This defendant does not know how it appears to the complainants, as stated in their bill, that neither the original nor supplemental bill, nor

any answer to either, was sworn to. He therefore does not admit, but denies, said statement, and now affirms that certainly both of said bills were sworn to properly and in pursuance of law, and that the answers of the adult defendant were probably sworn to.

It is true that all the papers of said suit have been lost; probably, as stated in the bill, were destroyed by fire; all the ended causes of said court were so destroyed by said fire; and, so far as this defendant knows, there are no copies in existence of any of the proceedings, bills,
25 answers, reports, depositions, or exhibits in said cause now in existence. The decrees, copies of which have been filed with complainant's bill, remain upon the order-book, and the confederate bonds purchased by David Parr, com'r, with the proceeds of sale, are on file among the money-bonds of the court, in the clerk's office.

This defendant having answered the statements of said bill seriatim, will now proceed to give a full history of the origin and progress of said suit, and of all the circumstances attending the same, so far as he has been enabled by diligent enquiry to collect the same from the most reliable and best-informed sources since this suit was commenced.

Edwin Knotts, dec'd, the father of the infant complainants, died in the fall of the year 1862, in Richmond, in the house which is now claimed by complainants. He had purchased it a short time previous to his death. He died poor, leaving behind him for the support of his widow and children only this real estate and a small parcel of furniture. The said wife, Emily J. Knotts, had no means of support whatever for herself and children except this house and the furniture. The house was almost uninhabitable, so much out of repair was it, and nobody except the owner would have lived in it. As evidence of this, the house remained tenantless for months after the death of Knotts, and was without a tenant when sold by the commissioner. Mrs. Knotts and
26 the children had no means with which to repair it, and consequently the house remained on her hands, going more and more to ruin day by day, and exposed to depredation from the vagrant population which at that time abounded in Richmond. The value of this real estate in its condition at that time is estimated by competent judges at not more than fifteen hundred dollars ($1,500) of the present currency. Under these circumstances, (Mrs. Knotts and her children being without means of support at a period when the necessaries of life bore a very high price,) Mrs. Knotts applied to Stephen Bowis, sr., to become the guardian of her children, and to give the security which the court required, and to assist her in procuring a decree for the sale of the real estate. Mr. Bowis kindly consented, from a feeling of pity for Mrs. Knotts, who was comparatively friendless, and accordingly on the 18th of February, 1863, qualified as guardian of Annie & Carrie Knotts, and gave security in the sum of $5,000. A copy of this order made by the hustings court is herewith filed, marked M, and prayed to be taken as part of this answer. After this had been done, Mrs. Knotts strenuously urged, and very properly, that Mr. Bowis should file a bill for the sale of the real estate, urging that she could support herself and children on the interest of the bonds which she desired to have bought with the proceeds of sale. Accordingly Mr. Bowis, at the insti-
27 gation of Mrs. Knotts, applied to Robert R. Howison, esq., a lawyer of eminent ability and high standing in the city of Richmond. He, upon consultation with Mrs. Knotts, she consenting and urging, prepared the bill and answers. He is able to assert most positively that the bill was sworn to, and that every step in the proceedings was most cautiously and accurately taken, and that the statute was most

fully complied with in every particular. So cautious was Mr. Howison, that, as soon as it became known to him that Mrs. Knotts had been left enciente by her husband, he filed a supplemental bill, also sworn to, and upon the birth of Edwin Knotts, jr., he was made a party to the suit by guardian ad litem. Further, Stephen Bowis, sr., who had already become the guardian of his sisters, qualified, at the instance of Mrs. Knotts, as his guardian in the hustings court, on the 29th Dec., 1863, giving security in the sum of $3,000. A copy of said qualification is herewith filed, marked N, as the best answer to the statement of the bill that Edwin Knotts, jr., had no guardian.

When the suit was in progress, and preliminary steps had been taken of a reference to a master in chancery, and his report, shewing the propriety of the sale, had been made, (this master in chancery was Thomas I. Evans, esq., an able and judicious officer,) Mrs. Knotts applied to David Parr, esq., to act as commissioner, which he consented to do without compensation of any sort, and accordingly gave bond. It is
28 proper here to say that the kindness of Mr. Parr and Mr. Bowis to Mrs. Knotts and her children was wholly disinterested, they being originally from Baltimore, and old residents of Richmond, while Edwin Knotts, dec'd, had recently come to Richmond from Baltimore. They felt a sympathy for his family, and desired to assist them. Mr. Parr estimated the value of the property at $8,000 of the currency of that day, and was much gratified and surprised that the property brought $13,800 of confederate currency, at that time equivalent to nearly $3,500 of the present currency. This respondent, being without a home, was anxious to purchase, and Mr. John M. Daniel, late of the Examiner newspaper, was his competitor at the sale, and there were other bidders.

This respondent, exercising the option given him, paid the whole purchase-money in cash, and, as hereinbefore stated, received a deed as soon as the sale had been confirmed by the court. Since his purchase this def't has expended more than the equivalent of one thousand dollars in U. S. currency in repairing the house aforesaid.

This respondent further states that while David Parr, the commissioner, had the option of investing the proceeds of sale in Confederate States bonds, State bonds, or city bonds, Mrs. Knotts was urgent to have the proceeds invested in 8 p'r cent. confederate bonds, because
29 they paid the best interest. This was done, and the bonds are now on file in this court. It was the plan of Mrs. Knotts to convert everything into confederate bonds which she could control, and accordingly she sold all the furniture left by Mr. Knotts, and procured Mr. Parr to purchase for her a confederate registered bond, which he did. Her receipt to Mr. Parr for that bond, bought with proceeds of furniture, is herewith filed, marked O, and will serve to show the animus of Mrs. Knotts in this whole matter.

Mrs. Knotts repeatedly declared that her property would not support her as it was, but, if turned into 8 per cent. confederate bonds, it would. The investment realized her over $1,200 per annum in confederate currency, and had the confederacy succeeded and paid its bonds she would have been in independent circumstances.

The interest on the confederate bonds (invested by order of court) was regularly paid by Parr to Mrs. Knotts and S. Bowis, guardian of the said infants. (See by Exh't P a receipt of S. Bowis, sr., herewith filed, for the last payment of interest.)

Upon this they were supported until the depreciation of the currency reduced them to such straitened circumstances that Mrs. Knotts, shortly

before the close of the late war, left the confederacy, and went to Indiana with her children, where they now reside.

30 This defendant again affirms that the sale of the said real estate was at the time plainly for the best interests of the infant complainants; made, too, after the most careful consideration, upon full and ample proof, by a court whose judge was proverbial for the anxious and almost parental care which he took of the interests of infants in his court; and that all the proceedings were most carefully and accurately conducted. This defendant is further advised that, by a wise and just rule of law, in the absence of the original papers of the said cause, and of all copies thereof, it will be presumed that the proceedings in said suit were regularly conducted, and that all its decrees were rightly entered. This defendant is further advised, and now insists, that there is no rule of law which requires from courts in the sale of infant lands infallibility of judgment, and a knowledge of future events, and the mode and manner in which such events may affect the interests of infants. He is advised that it is sufficient at the time that a sale of infants lands is ordered that such sale be clearly for their interests, and that this being established and a sale made, the result, whether for good or evil, must, like all other human interests, be necessarily affected by the revolution of time and the progress of events.

31 This defendant is advised, and now insists, that it would be a gross wrong, and contrary to equity and good conscience, to set aside the proceedings in said suit and deprive him of his property. He insists that the bill of the complainants should be dismissed.

And now, having fully answered, he prays to be hence dismissed with his reasonable costs by him in this behalf expended. And he will ever pray, &c.

C. J. BALDWIN,
By Counsel.

CANNON AND COURTNEY, *P. D.*

Affidavit.

COMMONWEALTH OF VIRGINIA,
City of Richmond, to wit:

I, W'm Norwood, jr., a notary public in and for the city of Richmond, in the State of Virginia, do hereby certify that Charles J. Baldwin, whose answer is written above, this day personally appeared before me, in my said city, and made oath that the foregoing answer so made by him is true so far as made of his own knowledge, and so far as the statements therein made are derived from information given by others, he believes said statements to be true.

Given under my hand this 31st day of January, 1870.

W'M NORWOOD, JR., *N. P.*

EXHIBIT L, WITH ANSWER.

32 *Exhibit L, with answer.—A deed.*

This deed, made this 21st day of May, in the year 1863, between David Parr, commissioner in the chancery suit of Bowis, guardian, vs. Knotts & als., pending in the circuit court of the city of Richmond, of the first part, and C. J. Baldwin of the second part, witnesseth:

Whereas by a decree pronounced in the said cause, on the 13th day

of March, 1863, David Parr, as commissioner, was directed to sell the real estate of Edwin Knotts, deceased, and accordingly sold the same at public auction on the premises on the 3d day of April, 1863, and C. J. Baldwin became the purchaser at the price of thirteen thousand eight hundred dollars, and hath paid the same, and the said court, by its decree of the 5th day of May, 1863, hath approved the sale, and directed the said David Parr, as commissioner, to convey by deed with special warranty to the said C. J. Baldwin the said real estate. Therefore, in consideration of the premises and of the said sum of thirteen thousand eight hundred dollars, David Parr, commissioner, doth grant, convey, and transfer with special warranty unto the said C. J. Baldwin, his heirs and assigns, the said real estate, as follows:

All that lot or parcel of ground with the brick dwelling-house, and all improvements, appurtenances, rights, and ways thereto belonging, lying in the city of Richmond, fronting sixty-six feet on the north
33 side of Franklin street, between 27th and 28th streets, and running back between parallel lines 165 feet, more or less, with the privilege of using an alley in common, 15 feet wide and extending from the said lot to 27th street, that being real estate of which Edwin Knotts died seized, and which was conveyed to him by deed from Sarah E. Shelton, executrix of Alex'r B. Shelton, dec'd, dated the 25th day of March, 1862, recorded in book 78 B, page 87, Richmond hustings court, to which reference is hereby made. Witness the following signatures and seals.

DAVID PARR, *Comm'r.* [SEAL.]
[SEAL.]

Certificate.

CITY OF RICHMOND, VA., *to wit:*

I, R. R. Howison, a notary public in and for the city aforesaid, in the State of Virginia, do hereby testify that David Parr, commissioner, whose name is signed to the writing hereto annexed, bearing date the 21st day of May, 1863, has acknowledged the same before me in my city aforesaid.

Given under my hand this 22nd day of May, 1863.

R. R. HOWISON,
Notary Public, Richmond, Va.

Recorded.

CITY OF RICHMOND, *to wit:*

In the office of the court of hustings for the said city, the 4th day of June, 1863.

34 This deed was presented, and, with the certificate annexed, admitted to record at one o'clock p. m.

Teste:

RO. HOWARD, *Clk.*

EXHIBIT P, WITH ANSWER.

Exhibit P, with answer.—Receipt.

Received, Richmond, Jan. 9th, 1865, of David Parr, commissioner,

three hundred and sixty dollars, that being the amount collected by him for interest due on a C. S. bond in favor of the children of Edwin Knott, dec'd.

S. BOWIS, SR.,
Guardian.

EXHIBIT O, WITH ANSWER.

Exhibit O, with answer.—Receipt.

RICHMOND, *April 24th*, 1863.

Received of David Parr confederate registered bond No. 1609, for fifteen hundred dollars.

EMILY J. KNOTTS.

EXHIBIT M, WITH ANSWER.

Exhibit M, with answer.

In the hustings court for the city of Richmond, Wednesday, February 18th, 1863.

"The court appoints Stephen Bowis, senior, guardian of Annie
35 Knotts and Caroline Knotts, orphans of Edwin Knotts, deceased, who are under the age of fourteen years; and thereupon the said Stephen Bowis, sen'r, entered into a bond in penalty of five thousand dollars, conditioned according to law, with R. H. G. Bowis, his surety therein, who justified on oath as to his sufficiency, and which bond, being acknowledged by the obligors therein, is ordered to be recorded."

A copy. Teste:

A. WASHBURNE, *Clk.*

EXHIBIT N, WITH ANSWER.

Exhibit N, with answer.

In the hustings court for the city of Richmond, Tuesday, December 29th, 1863.

"The court appoints Stephen Bowis, senior, guardian of Edwin Knotts, orphan of Edwin Knotts, deceased, who is under the age of fourteen years; and thereupon the said Stephen Bowis, sen'r, entered into a bond in the penalty of three thousand dollars, conditioned according to law, with Robert H. Mullen, his surety therein, which bond, being acknowledged by the obligors therein, is ordered to be recorded."

A copy. Teste:

A. WASHBURNE, *Clk.*

And on the 27th day of June, 1870, the following depositions were returned and filed in the cause:

36 *Depositions.—Notice.*

Notice.

To Carrie Knotts, Annie Knotts, and Edwin Knotts, infants suing by Emily J. Knotts, their next friend.

Take notice, that on Wednesday, the 30th day of March, 1870, between the hours of 9 a. m. and 6 p. m. of that day, at the office of the

clerk of the circuit court of the city of Richmond, in the city of Richmond, I shall proceed to take the depositions of David Parr, R. R. Howison, and others, to be read as evidence on my behalf in a certain suit in equity now pending in the circuit court of the city of Richmond, in which said suit you are plaintiffs and myself and others are defendants; and if from any cause the taking of said depositions should not be commenced on that day, or, being commenced, should not be completed, the taking of the same will be continued from day to day or from time to time until the same are completed, and at the same place and between the same hours.

C. J. BALDWIN,
By Counsel.

A.

Service.

The within notice was served on us this 18th day of March, 1870.
STEGER AND SANDS,
Surviving Partners of Steger.
WM'S & SANDS,
Counsel for Plaintiffs in within-named suit.

37 *Depositions.*

Depositions.

Depositions taken before me, James N. Dunlop, a notary public in and for the city of Richmond and State of Virginia, pursuant to a notice hereto annexed marked A, at the office of the clerk of the circuit court in the city of Richmond on the 30th day of March, 1870, to be read as evidence in behalf of C. J. Baldwin, in a suit in equity depending in the circuit court of the city of Richmond wherein Carrie Knotts, Annie Knotts, and Edwin Knotts are plaintiffs, and C. J. Baldwin is defendant.

David Parr sworn.

CLERK'S OFFICE OF CIRCUIT COURT OF RICHMOND CITY,
March 30th, 1870.

Present for the def'ts, (C. J. Baldwin,) Henry G. Cannon, esq.
" " " p'ffs, Alexander H. Sands, esq.

DAVID PARR, a witness of lawful age, being first duly sworn, deposes and says as follows:

1. Ques. by def't's counsel. State whether you know the parties to this suit.

Ans. I do.

2. Ques. State whether you sold, as commissioner of the circuit court of Richmond, on the 5th day of April, 1863, the real estate of Church hill, on Franklin street betwen 27th and 28th streets, in the city of Rich-
38 mond, which is in controversy in this suit. If so, state at whose request you became commissioner, all that you know about the circumstances which led to the sale, the circumstances attending the sale, your connexion with the whole matter, &, generally, all that you know about it.

(EXCEPTION.—The question is excepted to by the counsel for the plaintiffs as illegal and incompetent. The matters called for in the question ought to be in writing, and in the suit in which the sale was ordered to be made.)

Ans. I acted as commissioner at the sale of the property, and sold it. I was solicited by Mr. Bowis, sr., the guardian for these children, and afterwards waited on by Bowis and Mrs. Knotts—a day or two after Mrs. Emily Knotts—and consented to sell without fee or reward, and we three went to the circuit court together and I qualified as commissioner, and I think without security, by their consent. I was instructed by the court to go on and sell the property after giving ten days' notice. I was instructed by the court, at the instance of Bowis and Mrs. Knotts, to invest the money in 8 per cent. confederate registered bonds, which was all done according to the order of the court. These bonds were delivered to Judge Meredith's court, and all this done in accordance with the extreme poverty of Mrs. Knotts and her inability to repair the property, the house being in such condition that you could not rent it without repairs. Mrs. Knotts refused to have the money invested in any other securities. When the house was
39 sold she broke up housekeeping and sold the furniture. $1,500 was the proceeds of sale, which she gave me to buy an individual bond for herself. I as commissioner reported to court, and the court ordered me to give a deed to the property. I was then directed by the court to continue to draw the dividend from these bonds, which I did, and paid over to the guardian, on account of the sale of the property, and to Mrs. Knotts on account of her $1,500. I advised her to leave Richmond and go to her sister in Indiana, because her income was inadequate to the support of herself and children, and about the month of September or October she left according to my advice. I received two or three letters from her after she left.

(EXCEPTION.—Counsel for plaintiffs except to so much of the foregoing answer as attempts to explain his action under the decree of sale. His report of the sale is the best evidence of his action thereunder, and is hereby called for; or, that failing, proof of the contents of that report in a legal manner should be furnished.)

3. Ques. Did you know Edwin Knotts, deceased, the husband of Emily J. Knotts, and the father of the infant complainants?

Ans. I did; they were visitors at my house—Edwin Knotts and family.

4. Q. When did he die?

Ans. I am unable to state the date; probably in the early part of 1863. My papers burnt up on 3d of April. I have no data.

40 5. Q. What property, real and personal, did he die possessed of?

A. This one house & the furniture therein.

6. Q. What was your estimate of the value of this house, in the condition in which it was at the time of sale, before you offered it for sale?

A. I estimated it at $10,000 at the highest. I thought it would sell for between $8,000 and $10,000.

7. Q. Had Mrs. Knotts and her children any means of support whatever except by renting or selling this house?

A. No.

8. Q. Was the house tenantable or not at the time of your sale?

A. It was occupied by Mrs. Knotts up to the time of sale. The roof leaked all over. The basement-floor was entirely decayed, which was the most essential part of the house, and without those essential repairs you could not rent it.

9. Q. If the house had remained unsold, unrepaired, and untenanted till the close of the war, would its condition have been the same, or better, or worse, than it was at the time it was sold?

A. It would have been infinitely worse.

10. Q. In such an event would or would not its value have been seriously repaired?

A. I imagine it would. In the condition of things, I have no
41 doubt it would have been entirely torn to pieces.

11. Q. Was there competition among the bidders at the sale made by you?

A. There was very spirited bidding. Three or four gentlemen seemed determined to have the house, but Mr. Baldwin succeeded.

12. Q. Who instigated, set on foot, and urged the proceedings which finally resulted in a sale of the said house?

A. I don't know, as I was waited on by both parties, Bowis, the guardian, and Mrs. Knotts. They both urged the sale. I advised against it. Mrs. Knotts seemed to be the most urgent.

13. Q. Was $13,800 of confederate treasury notes on the 5th of April, 1863, in your opinion, an inadequate, a fair, a full, or a large price for the said property in its then condition?

A. It seems to me it sold for more than that. I thought the amount it sold for, whatever it was, a fair price—a large price. I tell you why I say so. I offered it to Mr. Cha's Palmer for $10,000 at private sale, but the court refused to let me sell it in that irregular manner, & directed a sale at auction. Both Bowis & Mrs. Knotts agreed to take the $10,000, but, according to the order of the court, it went to auction & bro't this large price.

14. Q. Did Mrs. Knotts insist upon having the proceeds of sale invested in 8 pr. ct. confederate bonds; and if so, what reason
42 did she give?

(Excepted to as leading question.)

A. She did insist on investing in confederate bonds for the reason it was paying better than any other security in the market.

15. Q. Look at the paper now shown you marked Exhibit O, and filed with the answer of the defendant Baldwin, dated April 24th, 1863, and purporting to be signed by Emily J. Knotts, acknowledging the receipt from you of confederate registered bond No. 1609, for $1,500, and say whether the said signature is the signature of Emily J. Knotts.

(The paper marked O, as allegal and incompetent evidence, & this question, are excepted to.)

A. That is the signature of Emily J. Knotts.

16. Q. Look at the paper now shown you marked Exhibit P, & filed with the answer of the defendant Baldwin, as an exhibit, dated January 9th, 1865, & purporting to be a receipt of S. Bowis, sr., guardian, for $360, for interest collected by you on a Confederate States bond in favor of the children of Edwin Knotts, dec'd, and say whether that is the signature of S. Bowis, sr.

(Same exceptions to paper "P" as to last question, and to the question also.)

A. That is the signature of S. Bowis, sr.

43 17. Q. Did you ever make any other payment of interest, in the bonds purchased by you, either to Mrs. Knotts or to S. Bowis, sr., guardian?

A. I did to both. The July interest previous to the January I divided, paying to Mrs. Knotts one-third and Bowis two-thirds, the receipts for which were destroyed 3d April.

(The counsel for the plaintiffs not waiving, but expressly relying on the several exceptions heretofore taken, proceeds to cross-examine the witness.)

Cross-examined by Alex. H. Sands, esq.:

1. Ques. How many children had Mrs. Emily J. Knotts when the suit for the sale of the property was instituted?

A. I am not certain. She was enciente when her husband died, and I don't remember whether that child was born before or after the institution of the suit. Without that child there were two. I can't remember the names of the children; Carrie was one; they were both little girls.

2. Q. Was the child born after the father's death a boy or girl, and what was its name?

A. A boy, named Edwin.

3. Q. Whom did Mr. Knotts get the property from, and how?

A. I don't remember the lady's name he bought it from, but he bought it after the commencement of the war some time, & he told me he paid for it in confederate money.

44 (So much of the foregoing answer as does not respond to the question the plaintiffs except to.)

4. Q. How long after the death of Mr. Knotts was it before the suit for the sale of the property was instituted?

A. I don't remember the date; I should judge some seven or eight months; have no way in the world to come at it.

5. Q. Did Mr. Knotts, the father of the infants, have any brothers or sisters, or half-brothers or sisters, at the time of his death?

A. I did not know his family before he left Baltimore. I only know he had one brother in Richmond.

6. Q. Was that brother alive when the suit for the sale of the property was instituted?

A. Yes.

7. Q. His name?

A. I think, William Knotts.

8. Q. In 1863 what was the commuted value of confederate money for the months of March, April, and May? Can you say without reference to the table?

A. I can't say without reference to the table.

9. Q. What would that property have sold for before the war?

A. I think, from $1,200 to $1,500.

10. Q. If in the condition it was when you made the sale, what would it bring now?

45 A. I shouldn't suppose it would bring over $1,200 now in the same condition.

11. Q. Did you know that Edwin Knotts was not a party to the suit when the decree of March 13, '63, ordering you to sell the property, was made?

A. I don't remember now.

12. Q. Was Stephen Bowis guardian of Edwin Knotts at the time the suit was instituted?

A. I can't tell. I don't remember when the child was born.

13. Q. Please look at the decree of March 13, '63, now handed you, being the decree for sale, & say who Bowis describes himself as guardian for in that decree.

A. This I never saw before. To my present recollection, I never saw any of these papers.

(After reading the paper the witness adds:) I remember all about that paper now; it was a dead letter on my mind before. He describes himself as guardian for those two children named in the decree, Annie Knotts and Carrie Knotts.

14. Q. Do you know whether Bowis was ever the guardian of Edwin Knotts? If so, state the court in which he qualified.

Ans. I think he qualified as guardian of Edwin Knotts in Judge Meredith's court. It strikes me he told me so. I don't know the fact.

15. Q. When?

Ans. I have no knowledge.

16. Q. Did Mr. Knotts leave, besides his brother, any descendants of brothers or sisters, of your knowledge?

46 A. I don't know.

17. Q. Was the deed you delivered to Baldwin stamped at the time you delivered it?

A. Don't think so. We knew nothing about the stamp law at that time.

18. Q. I see by one of the decrees that the commissioner is required to report the fee-simple value of the land, and what the nett annual value was. Do you know who were examined in taking these enquiries?

A. At present don't remember, but think Mr. Evans was one. Have but a poor memory at best.

19. Q. Was the sale made for confederate money?

A. Yes.

20. Q. It appears by a copy from the records of the Richmond hustings court, of an order made by that court on this day, December 29th, '63, that Stephen Bowis was then appointed guardian of Edwin Knotts. Had you not long before this time conveyed the property to Baldwin, to wit, in May, 1863?

A. Yes, sir. I conveyed the property to Baldwin according to the date of deed of 21st of May, 1863.

Re-examined by Henry G. Cannon, esq.:

1. Q. Was William Knotts, of whom you have spoken as the brother of Edwin Knotts, present at the sale made by you, or was he in any way cognizant of the suit which resulted in the sale?

(Excepted to as leading.)

47 A. I have no knowledge of his being present, and I am sure he had nothing to do with the business of the sale. I knew nothing of W'm Knotts at that time.

2. Q. You have been asked whether the deed made by you, as commissioner, to Baldwin was stamped at the time it was made; please look at it now & say if it *it* is not now stamped, and whether these stamps have not been cancelled by the seal of W'm James, collect' of U. S. int. rev. for the 3d collection district of Virginia.

A. It is now stamped and so cancelled, Feb'y 2d, '67.

3. Q. State your age and residence.

A. 65 years; residence, city of Richmond. I arrived here in 1851; have been here since.

Further saith not.

DAVID PARR.

Depositions adjourned until 11 o'clock, March 31st, 1870, at same place.

JA'S N. DUNLOP, *N. P.*

R. R. Howison sworn.

CLERK'S OFFICE OF CIRCUIT COURT OF RICHMOND CITY,
March 31st, '70.

Present: For C. J. Baldwin, the def't, Henry G. Cannon, esq.; for the plaintiff, A. H. Sands, esq.

R. R. HOWISON, a witness of lawful age, being first duly sworn, deposes and says as follows:

48 1. Ques. State your occupation & residence.

Ans. I have been a practicing lawyer in the city of Richmond for about twenty-five years past.

2. Q. Are you acquainted with any of the parties to this suit?

A. I am acquainted with Mrs. Emily J. Knotts, and have a slight acquaintance with her daughters, Annie and Carrie Knotts. I do not remember ever to have seen the young infant, Edwin Knotts. I am acquainted with Stephen Bowis & C. J. Baldwin.

3. Q. State whether you, as counsel, conducted, in the early part of the year 1863, a chancery suit in the circuit court of the city of Richmond for the purpose of obtaining a sale of a tenement on the north side of Franklin street, between 27th & 28th streets, in the city of Richmond, belonging to the estate of Edwin Knotts, deceased; and if so, state by whom you were employed; for what purpose a sale was desired; what was done in the conduct of the suit; who were the parties to it; and, generally, all that you know about it.

Ans. Early in the year 1863, I think in January, Mr. David Parr & Mr. Stephen Bowis called on me in behalf of Mrs. Emily J. Knotts and her children, and employed me to conduct the necessary proceedings to obtain a sale of the real estate mentioned in the question, and a division and investment of the funds according to law. I found that her
49 two daughters, Annie & Carrie Knotts, were without a duly-qualified guardian, and, after learning the facts, I advised, first, that a guardian should qualify for them; and this was accordingly done. Stephen Bowis was appointed the guardian by the hustings court of the city of Richmond, over which Hon. W'm H. Lyons then presided. The appointment was regular, and Mr. Bowis gave security according to law. After this qualification I proceeded to conduct a chancery suit for the purposes I have already stated. To the best of my knowledge & belief, the bill was filed in the circuit court of the city of Richmond in February, 1863. It was a bill carefully drawn in the name of the guardian of the infants, and was constructed in accordance with the provisions of the code of Virginia in such cases. The bill having been destroyed and having no copy thereof, I can only state its contents from memory; but, my memory having been refreshed on the subject, I have no difficulty in stating them. The bill set forth the facts, that this real estate, with perhaps a small amount of personalty, was all that was left by Edwin Knotts, dec'd; that the said real estate yielded little or no income, & was in a condition requiring repairs, and was becoming worse and worse all the time; that the family had no means to expend in repairs; that the widow, Mrs. Emily J. Knotts, was entitled to her dower therein; that the property was wholly incapable of partition according to the rights of the parties entitled; and, therefore, the
50 interests of all the parties entitled, including the infants, would be greatly promoted by a sale and a division and investment according to law; that Mrs. Emily J. Knotts, the widow, desired such

sale, division, and investment, and had in fact requested the proceedings therefor. The bill was sworn to according to law. An answer was prepared, and was signed and sworn to by Mrs. Emily J. Knotts, admitting the truth of the statements of the bill, and stating that she desired the sale, division, and investment of the proceeds as prayed therein. The bill also, to the best of my recollection, stated the fact that Mrs. Emily J. Knotts was enciente at the time, & prayed that in case of birth of a living child, it should be made a party, and its rights and interests protected as fully as those of the other children. A guardian ad litem was *was* appointed for the infants, and filed their answer, and the cause was docketed by consent of all the parties, and a decree directing proper enquiries was made. Upon the hearing, this decree was regularly executed by Commissioner Tho's I. Evans. Full evidence of the condition of the property and of the facts bearing on the enquiries was adduced before him, and he made his report, which was approved by the court, and a decree was rendered for the sale of the property, in which David Parr was appointed commissioner, he consenting to act without compensation for the benefit of the widow and children, for which, I remember, Mrs. Knott expressed herself very grateful. The sale took place in April, '63—the 3d of April, 1863. The property brought $13,800
51 in the then currency, which was a price so far beyond the expectations of any of the parties, that I remember that Mrs. Knotts, Mr. Bowis, & Mr. Parr all expressed their gratification at it, and I heard the two young ladies were pleased, though I did not hear them myself. The purchaser complied with the terms of the sale, and, according to the liberty given him in the decree, paid up the whole purchase-money in cash, and Mr. Parr, the commissioner, made the investments required by the decree, and reported the sale and his proceedings to the court; and, in order to take every precaution, a supplemental bill was filed stating all the facts material up to that time, and that it was expected that Mrs. Knotts would soon give birth to another child, and that the said child should be made a party to the cause and its rights protected, and thereupon the court, on the 5th of May, 1873, made a decree approving and confirming Mr. Parr's report, and ordering him to convey the property to the purchaser by deed with special warranty. This deed I afterwards drew in accordance with the decree, and it was executed, and acknowledged by Mr. Parr and delivered to the purchaser and recorded, and this deed I recognize as the same paper, marked L, filed with the answer of the defendant Baldwin. After the birth of the posthumous child, Edwin Knotts, Stephen Bowis qualified in the hustings court of the city of Richmond as his guardian, and the fact of the birth of this child and of the qualification of Stephen Bowis, his guar-
52 dian, was by proper proceeding brought to the knowledge of the court in the cause, and the court by its decree protected and provided for the interests of this infant, as of the other infants, they being all represented by this same guardian. The papers of the cause having been lost or destroyed, I cannot refer to any of them, except the copies of the decreee herein filed; but I am certain that, from the beginning of the cause to its end, the existence, rights, and interests of the infant en ventre sa mère were fully stated, recognized, and protected according to law. In making the parties defendant, all persons were made parties required by the statutes applicable thereto. In case of the death of any one of the children, the other children would have been heirs of the child so dying; and this is in conformity with the practice of the chancery courts of Virginia, settled and established during a long series of years. Throughout the whole proceeding Mrs. Emily J. Knotts not only

consented, but urged them on with great earnestness, and Mr. Bowis and Mr. Parr acted under her directions and in support of her view, and she frequently stated that this proceeding was indispensably necessary for the support of the family. I remember that she stated that the house was for a long time without any tenant, and she could not get any income at all from it. I took extraordinary pains to conduct
53 the proceedings in strict conformity with law, and his honor the judge was exceedingly careful at every step and stage of the cause that all should be right and regular.

2. Q. At whose instigation were the proceeds of sale invested in 8 pr. ct. confederate bonds?

A. The decree gave Commissioner Parr an option of investing either in confederate bonds, or in the bonds of any State belonging to the confederacy, or the bonds of the city of Richmond. The question as to the investment was very fully conferred about between Mrs. Emily J. Knotts, Mr. Parr, the commissioner, and Mr. Bowis, the guardian; and Mrs. Knotts preferred confederate 8 pr. cent. bonds, in which view Mr. Parr and Mr. Bowis concurred.

Cross-examined by Alex. H. Sands, esq.:

1. Q. At the time you drew the blll in the suit did you know that Mr. Knotts, the father of the infants, had a brother living in Richmond?

Ans. I do not remember that at that time the fact that Edwin Knotts, dec'd, had a brother in Richmond was known to me; it was not a material fact. Since the war I have learned that he had such a brother, who has employed me in examining titles and making a lease.

2. Q. I did not ask whether it was a material fact; do you now know whether the fact was communicated to you or not at that time?

A. I do not remember that it was.

54 3. Q. You say in your answer that your memory has been refreshed; has it been partly refreshed by reading the answer of Mr. Baldwin, in this cause, this morning in this room?

A. My memory has been chiefly refreshed by examining entries on my own books relating to this subject. It is true that I have this morning read a part of the answer of Mr. Baldwin herein; but all the statements I have made would have been made without seeing said answer. I cannot state, therefore, that my memory has been refreshed by reading it.

4. Q. When did you make Edwin Knotts, the infant, a party to the suit, and how?

A. He was made a party by the supplemental bill which was filed in the cause. I do not know that copies of all the decrees in the case have been preserved, but I am certain he was made a party, because my attention, as well as that of the court, was specially directed to that point.

5. Q. Was he made a party before the qualification of his guardian, Mr. Bowis?

Ans. He was made a party while en ventre sa mere, and after the qualification of Mr. Bowis he was more fully recognized as a party, and as represented by Mr. Bowis, his guardian, & a guardian ad litem was appointed for him; though I do not find in the copies of the de-
55 crees which are filed herein a formal statement of these facts, but they existed, I am quite confident.

6. Q. Who answered for him when he was made a party en ventre sa mere, and why is no note made in the decrees of the filing of such an answer, or the appointment of a guardian for him?

Ans. Being actually represented in the cause by Stephen Bowis, who

filed the supplemental bill stating the existence of this infant, his rights in the cause, and his purpose to qualify as his guardian if he was born alive, which qualification actually took place, he was as fully represented and as fully a party in the cause as if he had been born and Stephen Bowis had qualified as his guardian when the suit was commenced. The papers of the cause having been lost, I cannot state certainly whether the record shows any other proceedings or decrees than those of which copies are herein filed. I can only state with certainty that the existence, rights, and interests of this posthumous child were fully presented and passed upon by the court.

7. Q. Are you sure that the supplemental bill made the child of whom Mrs. Knotts was enciente a party?

Ans. I am perfectly sure of it; it was filed for the purpose.

8. Q. Why then did you not in the decree noting the filing of
56 that bill, to wit, the decree of May 5th, 1863, appoint a guardian ad litem to the child of whom she was then enciente, and require said guardian to file an answer?

Ans. The supplemental bill was filed by Stephen Bowis, guardian of the other infants, and states his purpose to qualify as guardian of the unborn child if born alive. It was therefore more strictly in accordance with the meaning and spirit of the statute under which the proceeding was taken than any other form that could have been adopted. If the decrees entered in the cause are all filed in this suit, this posthumous infant was made a party by the supplemental bill aforesaid, which was followed afterwards by his birth, and the qualification of Stephen Bowis as his guardian, all of which duly appeared in the cause, & his rights and interests were as fully heard and protected as if he had been born before the suit & Stephen Bowis had qualified as his guardian. My recollection is, that not only was this infant brought into the cause as a party in the manner I have stated, but that a guardian ad litem was also appointed for him, and filed a formal answer as in the case of the other infants. If the record as far as preserved does not shew
57 this, it may be that the part that has been lost would have shewn it. I am quite sure that every precaution was taken necessary & proper in law & equity to protect and adjudicate the rights of this infant.

(EXCEPTION.—To so much of the foregoing answer as is not responsive to the question the plaintiffs, by counsel, except. The witness was not asked as to his recollection about the appointment of a guardian ad litem to this infant, but he was asked to state why, in the decree of May 5th, 1863, in which he notes the filing of the supplemental bill, he does not have a guardian ad litem appointed and an answer filed.)

9th question. Was Stephen Bowis guardian ad litem of either child?

Ans. I think not.

10th question. Was there a guardian ad litem in the cause to the infant of whom Mrs. Knotts was enciente on the 5th day of May, 1863?

Ans. I cannot with certainty state whether a guardian ad litem was appointed for said infant before it was born, or afterwards, but to the best of my recollection the guardian ad litem was appointed after this child was born and named, and a formal answer filed by said guardian ad litem. I feel quite sure that the record of the case, if perfect, would shew this.

58 11th question. These facts occurred nearly seven years ago, and during a part of that time a terrible civil war has been raging; have you so much confidence in your powers of memory that you can now speak positively about them?

Ans. I remember this case very distinctly, and particularly remember the facts in reference to the posthumous child, because they engaged my attention at a very early point in the case, and I was specially to have protected and adjudicated fully the rights and interests of that child. I have no hesitation, therefore, in testifying that the facts are as I have stated.

12th question. Is your memory better than the record?

Answer. I do not pretend that it is: but the true record of the cause has been lost, & I am stating facts as I remember them, which may supply defects in the record.

13. Question. The decree of May 5th, 1863, is on record and preserved; it does not state that the infant of whom Mrs. Knotts was enciente had any guardian ad litem; how can you say that it had? The decree of January 7th, 1864, is on record and preserved; it does not say that Edwin Knotts, the infant born before that time, had any guardian ad litem; how can you say that it had? Are you not attempting to supplement records which have not been lost, but have been preserved, when
59 on your memory you undertake to state these facts existed when the record shows they did not exist?

Ans. I have already said that I was not certain whether the guardian ad litem of the posthumous child was appointed before its birth or after, but my recollection was that it was after. There may have been an order or decree appointing a guardian ad litem for the posthumous child and noting the filing of the formal answer of such guardian, and replication thereto, which does not appear in any of the decrees, copies of which are filed herein, and therefore, in stating that such proceedings did take place, I am not attempting to contradict the decrees appearing in the cause.

14. Question. In that event, would not the name of the infant Edwin by his guardian ad litem appear in the decrees subsequently entered?

Depositions adjourned to Thursday, April 7th, same time and place.

J. N. D., *N. P.*

CLERK'S OFFICE OF CIRCUIT COURT OF RICHMOND CITY,
April 8th, 1870.

Present, Henry G. Cannon, esq., for def't.
60 " Alex'r H. Sands, esq., " pl'ff.

14th answer. The style of the suit is generally written out by the clerk as originally brought, and is not given in the sketches of the decrees which the court orders to be entered. It is possible, in this case, that an order appointing a guardian ad litem for the infant Edwin Knotts may have been made, and this would be sufficiently included in the expression "the papers formerly read and the proceedings had herein," without further statement as to the said infant's being a party. It appears by the decree of January 7th, 1864, that the rights of this infant were as fully recognized and adjudicated as those of the other infants. The record of the case being imperfect & incomplete, I cannot do more than give my recollection of the proceedings, which is as I have already stated.

15th question. Your experience differs altogether from mine. Do you mean to say that in heading decrees in the chancery court in Richmond (this Richmond circuit court) it is the practice of the clerk to omit the names of any party? Please answer this question categorically, either yes or no.

Ans. It is my impression that the practice is to give the style of the case as it is originally brought, unless, for some special reason, a
61 more extended style seems to be necessary.

16. Question. You state it now as an impression; have you really any knowledge about it?

Ans. I have, in a practice of twenty-five years, seen the headings of a very large number of decrees in chancery, & my impression is derived from my experience. I have known a number of cases, in which decrees have been used in evidence, in which the style was the name of the first plaintiff and others against the first defendant and others; and this was sufficient, unless, as I have before said, a more extended style was necessary.

17. Question. Please state a single instance in which you have seen such a decree (in which simply the short style of the suit has been given) coming from the circuit court of Richmond City. Please name the case at once.

Ans. I think I can produce from the newspapers in which orders of publication against absent defendants have been inserted a number of such instances from the circuit court of Richmond, but cannot, from memory, of course, now state them. I will look them up & mention them, if you desire it.

18th question. Doesn't Mr. Howison know that in the cases of orders of publication it is expressly stated that there are "other" defendants when there are such beside the absent defendant, and that the
62 order of publication reads by saying "the defendant above named," &c.?

Ans. I believe such is usually the case, tho' not invariably, nor do I know that it is necessary in law.

19th question. Is there any mention in the heading of the decree of 7th January, 1864, in the suit of "Bowis, g'd'n, v. Knotts," a copy of which is now handed you, of any other defendant or defendants than these therein named?

Ans. The decree being in writing, I decline to answer the question except as it is answered by the decree.

20th question. Then I infer, from your unwillingness to answer, that this decree does not tally with the orders of publication you alluded to. Am I right?

(The counsel for C. J. Baldwin, one of the defendants, excepts to the foregoing question and any answer thereto, and, while not desiring in any way to restrict the line of examination within proper limits, protests that it is unjust to his client to burden him with the costs of notarial fees for the purpose of putting on the record, in the disguise of an examination, an argument of the plaintiffs' counsel; and especially does he object to this multiplicity of questions asked of the witness now under examination as to what is contained in any of the decrees of
63 Bowis, g'n, v. *Bowis*, which decrees are exhibits in this cause and speak for themselves, it being the province of the court to ascertain what is contained in the decrees aforesaid.

The counsel for the plaintiff insists that it is his right and his duty here to test the accuracy of the witness, who professes to speak here as an expert, in every legal way, and his questions have all been directed thus far to that object.)

Ans. I declined to answer because you asked me to state the contents of a writing, which was improper, because the writing is the best evidence of its own contents. The heading of this decree may or may not give all the parties to the suit, but whether it would tally, as you say, with the orders of publication of which I have spoken, I cannot tell without having those orders before me.

21st question. Why appoint a guardian ad litem to the infant Edwin Knotts after the sale had been decreed?

(The question & any answer thereto excepted to, as calling for a legal opinion from the witness.)

Ans. The infant was not born when the sale was decreed, & the course taken in this case from the time it was known that Mrs. Knotts was enceinte was intended for the express purpose of guarding and adjudicating the rights of this posthumous child. I have stated my recollection of that course, & whether it was right in law & equity for the
64 purpose intended is a question of law on which I suppose my opinion will not be more decisive than that of any other lawyer.

22d q. You say the bill was sworn to. Do you know who administered the affidavit?

Ans. I do not recollect, but I am quite sure the bill was sworn to in regular form before an officer authorized to administer an oath.

23d q. You don't state who.

Ans. I have already said that I do not recollect who administered the oath.

24th q. Do you recollect where the affidavit was administered — whether in your office, or in the clerk's office, or elsewhere?

Ans. I do not remember.

25th q. Who administered the oath to the guardian ad litem? Did he swear to his answer?

Ans. I do not remember, but am quite sure the answers of the guardian ad litem were in the usual and proper form, according to the practice in equity. That form, as is well known, is nothing but a submission of the rights & interests of the infant to the protection of the court.

26. Q. Did you know, when you filed the original bill, that Mrs. Knotts was enceinte?

Ans. I am not certain on that point; that's all I can say about it.

27. Q. Do you state it as a positive fact that the answer of Mrs.
65 Knotts was sworn to, or do you state it as your impression because you know that the answer ought to have been sworn to?

Ans. After a lapse of seven years, and after refreshing my memory from such means of refreshment as were in my power, I state it as my recollection that her answer was signed and sworn to by her.

28. Q. If that be so, why can't you go farther, and say by whom the oath was administered?

Ans. I may recollect writing an answer, and writing the proper form of affidavit, without remembering which one of the very numerous officers then authorized to administer oaths in Richmond may have done so.

29. Q. May it not be that, simply contenting yourself with having written the affidavit, nothing more was done with it? If you have so perfect a recollection of the statements of your bills, would it have been remarkable if you had had as perfect a recollection of having carried your papers to a proper officer and having him certify them?

Ans. If I wrote the affidavit, as I believe I did, I am quite sure I would not have been content to file the answer until the affidavit was completed. The proceedings were in their nature friendly. My recollection is that I prepared the answer of Mrs. Knotts, & that after
66 it was signed & sworn to as I have stated I filed it. My recollection of the nature and contents of the bills is perfectly distinct, but after preparing the answer and the form of the affidavit, it

was not all necessary that it should be sworn to in my presence, & I am not sure that it was, though it may have been.

30. Q. Were the proceeds of sale invested in confederate bonds?

Ans. I think so.

Further this deponent saith not.

R. R. HOWISON.

Certificate.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, James N. Dunlop, a notary public for the city aforesaid, in the said State, do hereby certify that the foregoing depositions were duly taken, sworn to, & subscribed before me at the times and place mentioned therein.

Given under my hand this 17th day of May, 1870.

JAMES N. DUNLOP,
Notary Public, Richmond, Va.

Cause transferred to chancery court.

And afterwards, to wit, on the day of this cause was transferred by operation of the statute in such case made and
67 provided from the circuit court of the city of Richmond to the chancery court of the city of Richmond.

Cause docketed as to C. J. Baldwin.

And afterwards, to wit, at rules held in the clerk's office of the said chancery court of the city of Richmond, on the last Monday in December, 1870, (up to which time the said cause had been regularly continued at rules,) on motion of the defendant, C. J. Baldwin, by counsel, this cause was ordered to be docketed as to him.

And at another day, to wit, at a chancery court of the city of Richmond held on the 9th day of January, 1872—

Order of January 9, 1872.

This day came Franklin Stearns, executor of C. J. Baldwin, deceased, who was one of the defendants in this cause, and suggested to the court the death of said defendant, C. J. Baldwin; and it appearing to the court that said Franklin Stearns is the executor of said C. J. Baldwin, and that Virginia Victoria Baldwin and Mary Frances Baldwin are the sole devisees of C. J. Baldwin, dec'd, on their motion it is ordered that they be admitted as parties defendant to this suit, and on like motion this cause is set for hearing as to them.

And at another day, to wit, at a chancery court of the city of Richmond held on the 20th day of February, 1872—

Order Feb'y 20, 1872.

68 This day came the defendants, Franklin Stearns, executor of C. J. Baldwin, dec'd, and Virginia Victoria Baldwin and Mary Frances Baldwin, the sole devisees of C. J. Baldwin, dec'd, and moved the court to hear this cause as to them at this term; but the

court being of opinion that while this cause was properly set for hearing as to the said executor and devisees of C. J. Baldwin, dec'd, by the order entered herein on the 9th Jan'y, 1872, yet by reason of the statute approved March 6th, 1871, amending and re-enacting section 50, chapter 171, of the code of 1860, that this cause cannot be docketed until the first day of the next April term of this court, and the court therefore orders that the clerk of this court do docket this cause on the 1st day of the next April term of this court.

And the said defendants, who in open court waived all process making them defendants, moved the court further for an order requiring the plaintiffs to mature their cause against the other defendants to the bill; and thereupon the court doth order that the plaintiffs proceed at once to mature their cause against the absent defendants, Stephen Bowis and Emily J. Knotts, by an order of publication to be made or otherwise, as may be proper.

And now at this day, to wit, at a chancery court of the city of
69 Richmond, held on the 2d May, 1872—

Order 2d May, 1872, removing cause to U. S. circuit court.

On motion of the plaintiffs in this cause, and upon reading the petition filed by them for a removal of this cause to the circuit court of the United States for the eastern district of Virginia, it is hereby ordered that the bond and security required by law & offered by them be accepted, and that the said suit be removed into the next circuit court of the United States for the eastern district of Virginia at Richmond, and that no further proceedings be had in said suit in this court.

Petition to remove cause to U. S. circuit court.

In the chancery court of the city of Richmond.

ANNIE KNOTTS, CARRIE KNOTTS, AND EDWIN Knotts, infants under the age of twenty-one years, who sue by Emily J. Knotts, their next friend,
vs.
FRANKLIN STEARNS, EX'R OF C. J. BALDWIN, Virginia Victoria Baldwin, and Mary Frances Baldwin.
} Petition.

To the honorable judge of the chancery court of the city of Richmond:

Your petitioners, Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, citizens and residents
70 of the State of Indiana, who petition and sue by their next friend, Emily J. Knotts, and by Isaac N. Pierce, their guardian, citizens and residents of the State of Indiana, respectfully state that they have reason to and do believe that from prejudice and local influence they will not be able to obtain justice in the chancery court of the city of Richmond, State of Virginia, and ask that the above-entitled cause of Annie Knotts et al., who sue by their next friend, Emily J. Knotts, and by Isaac N. Pierce, their guardian, vs. Franklin Stearns, ex'r of C. J. Baldwin, Virginia Victoria Baldwin, et al., be removed into the next circuit court of the United States for the eastern district of Virginia, the said cause involving matter in dispute exceeding the sum of $500

exclusive of costs, and they offer good and sufficient security for their entering in such court on the first day of its session copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and will do such other appropriate acts as by the laws of the United States in such cases made and provided are required to be done.

ISAAC N. PIERCE, *Guard., &c.*

Subscribed and sworn to before the undersigned, as notary public within and for Vigo county and State of Indiana, this 12th day of April, 1872.

E. J. KNOTTS. [SEAL.]

In testimony whereof I hereunto set my hand and notarial seal day & date above written.

71 W'M E. McLEAN,
Notary Public.

Subscribed and sworn before the undersigned, a commissioner of deeds for the State of Virginia within and for the State of Indiana.

EMILY J. KNOTTS.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Indianapolis, in the county of Marion and State of Indiana, this seventeenth day of April, A. D. 1872.

[SEAL.] LUTHER R. MARTIN,
Commissioner for Virginia in Indiana.

Bond.

Bond.]

We, W'm J. Leake and John Johns, jr., of Richmond, Virginia, are held and firmly bound unto Franklin Stearns, ex'r of C. J. Baldwin, Virginia V. Baldwin, and Mary Frances Baldwin, in the sum of one hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Franklin Stearns, ex'r of Virginia V. Baldwin & Mary Frances Baldwin, for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 2d day of May, 1872.

72 Whereas a suit was brought on or about the 1st day of January, 1870, in the circuit court of the city of Richmond, by Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under twenty-one years of age, who sue by their next friend, Emily J. Knotts, against C. J. Baldwin and Emily J. Knotts and Stephen Bowis, and the same is now pending in the chancery court of the city of Richmond, and is removable into the circuit court of the United States for the eastern district of Virginia, under the act of Congress in such case made and provided; and whereas the said Annie Knotts, Carrie Knotts, et al., by their next friend aforesaid, have filed their petition in said chancery court of the city of Richmond for the removal of said suit into the next circuit court of the United States held at Richmond for the eastern district of Virginia:

Now, therefore, the condition of the above obligation is such, that if the said plaintiffs, Annie Knotts, Carrie Knotts, and Edwin Knotts, by their next friend, Emily J. Knotts, shall enter or cause to be entered in said circuit court of the United States copies of all processes, pleadings, depositions, testimony, and other proceedings in said suit, and also shall there appear and do or cause to be done such other appropriate

73 acts as by the said act of Congress are required to be done before

the removal of a suit into the said circuit court of the United States, then the above obligation to be void; otherwise in full force and effect.

W'M JOSIAH LEAKE. [SEAL.]
JOHN JOHNS, JR. [SEAL.]

A true transcript from the record. Teste:

BENJ. H. BERRY, *Clk.*

PROCEEDINGS IN U. S. CIRCUIT COURT.

And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, on Wednesday, October 23d, 1872, the following certificate was filed:

Certificate.

Certificate.

In Richmond hustings court, December 29th, 1863.

The court appoint Stephen Bowis, sen'r, guardian of Edwin Knotts, orphan of Edwin Knotts, deceased, who is under the age of fourteen years. And thereupon the said Stephen Bowis, sen'r, entered into a bond in the penalty of three thousand dollars, conditioned according to law, with Robert H. Mullen, his surety therein, which bond, being acknowledged by the obligors therein, is ordered to be recorded.

74 A copy. Teste:

ANDREW JINKINS,
Clk of the Hustings Court of the City of Richmond.

OCTOBER 11, 1872.

And at another day, to wit, at a court held as aforesaid on Tuesday, the 13th day of May, 1873—

Final decree dismissing.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That the bill of the complainants be dismissed, and that the defendants recover against the complainants their costs about their defence in this behalf expended.

HUGH L. BOND,
C't Judge.

13' MAY, 1873.

Petition for appeal filed.

And now at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, at Richmond, in said district, on Thursday, the 15th day of May, 1873, came the complainants, by counsel, and filed a petition for appeal, which is as follows:

Petition for appeal.

75 Petition for appeal.

To the honorable H. L. Bond, judge of the circuit court of the United States for the eastern district of Virginia:

The petition of Annie Knotts, Carrie Knotts, by Emily J. Knotts, their next friend, they being infants, respectfully represents that by the decree

entered in the above-entitled cause, on the thirteenth day of May, 1873, the bill of your petitioners against the defendants in this suit was dismissed with costs to the defendants. Your petitioners refer to the said decree for the exact terms thereof.

Your petitioners pray for an appeal from the said decree to the Supreme Court of the United States, and ask this court to grant them such appeal; and they will ever pray, &c.

ANNIE KNOTTS,
CARRIE KNOTTS,
EDWIN KNOTTS,
By EMILY J. KNOTTS,
Their next friend, by Counsel.

Order allowing appeal.

Thereupon the court made the following order:

ORDER.

The plaintiffs in this cause, in which a decree was entered by the court on the 13th day of May, 1873, filed this day their petition
76 praying an appeal from the said decree; and the court doth order that an appeal from the said decree to the Supreme Court of the United States be allowed the said plaintiffs, upon condition that they, or some one for them, enter into bond in the clerk's office of this court in the penalty of two hundred dollars, payable as directed by law, with such condition as required by law, such bond to be given with sufficient security approved by the clerk.

HUGH L. BOND,
C't Judge.

MAY 15, 1873.

Appeal-bond.

Circuit court of the United States of America, eastern district of Virginia.

ANNIE KNOTTS, CARRIE KNOTTS, and EDWIN Knotts, infants under the age of twenty-one years, who sue by Emily J. Knotts, their mother and next friend,
vs.
FRANKLIN STEARNS, EXECUTOR OF C. J. BALDwin, dec'd, Virginia Victoria Baldwin, and Mary Francis Baldwin.

77 Know all men by these presents that we, Alex'r H. Sands and John Johns, jr., of the city of Richmond, Virginia, are held and firmly bound unto Franklin Stearns, executor of C. J. Baldwin, dec'd, Virginia Victoria Baldwin, and Mary Francis Baldwin, in the sum of two hundred dollars, to be paid to the said Franklin Stearns, ex'or of C. J. Baldwin, dec'd, Virginia Victoria Baldwin, and Mary Francis Baldwin, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seals and dated this 18th day of July, 1873.

Whereas the above-named Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, who sue by Emily J. Knotts, their mother and next friend, hath prosecuted an appeal to the Supreme Court of the United States of America to reverse the judgment or decree rendered in the above-entitled suit by the circuit
78 court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such, that if the above-named Annie Knotts, Carrie Knotts, and Edwin Knotts, infants as aforesaid, shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALEX'R H. SANDS. [SEAL.]
JOHN JOHNS, JR. [SEAL.]

Sealed and delivered in the presence of—

M. F. PLEASANTS, *Clerk.*

Approved and filed July 18th, 1873.

M. F. PLEASANTS, *Clerk.*

79, 80 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing contains a true and perfect transcript of the record, process, and proceedings in the cause lately depending in said court, wherein Annie Knotts, Carrie Knotts, and Edwin Knotts, infants under the age of twenty-one years, who sue by Emily J. Knotts, their mother and next friend, are complainants, against Franklin Stearns, executor of C. J. Baldwin, deceased, Virginia Victoria Baldwin, and Mary Francis Baldwin are defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Richmond, in said district, on this 18th day of July, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the 98th.

[SEAL.] M. F. PLEASANTS, *Clerk.*

(Indorsement on cover:) No. 248. Annie Knotts, Carrie Knotts, and Edwin Knotts, infants, by their next friend, Emily J. Knotts, appellants, vs. Franklin Stearns, ex'or of C. J. Baldwin, dec'd, Virginia V. Baldwin, and Mary F. Baldwin. E. Virginia C. C. U. S. Filed 14th October, 1873.

REC. 248—3

No. 248.

In the Supreme Court of the United States.

Brief of Argument by Appellants in reply.

KNOTTS, *Appellants,*
vs.
STEARNS *et als.*, *Appellees.*

On reading this record the natural enquiry is, "Why the hot haste displayed in selling the property of these children?"

The appellees say (page 1 of their brief) that Edwin Knotts, the father, died in the fall of 1862. But Parr, the commissioner, who acted under the decree of the Richmond Circuit court, who was the intimate and confidential friend of the family, testifies (page 17 of record) that he died "probably in the early part of 1863," and it appears that the property was sold April 3, 1863, *probably* ninety days thereafter!! He was scarcely buried, and the seclusion of mourning hardly over, before a bill was filed to sell the property, the answers filed (the same counsel, Howerton, undoubtedly acting for both plaintiffs and defendants), the cause docketed *by consent*, and referred to a commissioner to enquire and ascertain, etc.,—and all this February 27, 1863 (see pages 5 and 6 of record).

Mrs. Knotts well knew she was *enciente* then. Parr, the family friend and adviser, knew it (p. 19 of record). How-

ison, the attorney, states the bill alleged it (p. 22 of record). Yet without waiting a brief period, the proceedings for sale are hurried on. No guardian *ad litem* appears ever to have been appointed for this third child as required by the statute, nor the ordinary guardian, until December 29th, 1863, long after the pretended sale and conveyance was made (p. 15, exhibit N).

Thomas J. Evans was the commissioner (p 22 of record). Of this commissioner we will say, *en passant*, that in *Mayo's executor* v. *Carrington's executor*, 19th Grattan, pages 111–114, the Supreme Court of Virginia say that he "had to suspend his duties as commissioner" early in the war "owing to the disturbed state of the country," and could not resume or complete them until the war ended.

In *two weeks* from the reference to this commissioner, March 13, 1863, the order of sale (exhibit B, p. 6) is entered on that commissioner's report. In that order no notice is taken of the child *en ventre sa mere*. And April 3rd, 1863, the property was sold.

Why such haste to get rid of these children's patrimony—a piece of real estate that seems to have been desirable, as Parr testifies (p. 18, answer to question 11), "There was very spirited bidding, three or four gentlemen seemed determined to have the house." Among the bidders John M. Daniel, editor of the Richmond Examiner (marg. page 28), who, though a fierce secessionist notoriously, put not his faith in Confederate currency and bonds. Parr *advised* against the sale (p. 18, answer to question 12); he knew it was *not* to the infants' interest—he knew that if they should reach maturity there was the real estate, something for them; but no one knew what those revolutionary Confederate bonds would be the next month—that probably in a few years they would only be valuable as historical curiosities. But Mrs. Knotts was bent on it, and her determination carried the day.

It is true that when persons of full age chose to sell their

property for the only currency or circulating medium then in the country, the court will hold them to their bargain, because they were competent to contract and besides could use such currency in trade.

But it is a far different matter when the property of helpless infants is sought to be taken from them by a judicial procedure and nothing given them in return. The question arises, who authorized it, and how? And if it be not done according to law the courts will lend their assistance to the infant to avert the wrong sought to be inflicted without the children's knowledge or consent. And we are confident no United States Court will sanction such proceedings.

The case of *Thorington* v. *Smith* was not a question of investment in Confederate bonds, nor a case where infants were concerned; but where the query was as to a sale made for Confederate currency by an adult.

Unless this pretended sale and conveyance was in accordance with the law, we should have relief.

We show the court four particulars in which the law has been violated; upon any one of which we can ask the reversal of the decree in the court below, and a decision that this alleged sale is a nullity.

The appellees have the affirmative; they admit our title but for their pretended sale: they must show that the latter was legal, and all the requirements of the law complied with.

A sale of this sort must conform to the statute, or it is naught. In this case, the law was violated in several particulars. All the infants were not represented, and the uncle was not made a party.

The decrees of March 13, 1863, and May 15, 1863, were clearly in direct aid of the Confederate cause. The widow's urgent desire to put this property of these helpless children into Confederate bonds should not prejudice them;

nor should they be made to suffer for enthusiasm and sympathy they could not feel.

The decisions of the Virginia Court of Appeals, relied upon by the appellees, do not sustain their assertion that there was no necessity for making the uncle a party, nor for saying that the third infant, after it was born, was represented by the other two. A parallel case to this will not be found in the Virginia Court of Appeals.

But it is not to be expected that the Virginia Court of Appeals, in cases involving Confederate transactions and investments, will hold the same view as this court.

To illustrate our remark, compare the decision in *Newton's executor* v. *Bushong et als*, 22nd Gratt., p. 628, and the decisions of this court in *Knox* v. *Lee*, 12th Wallace, 457; in *Texan* v. *White*, 7 Wallace, 700; and in *Horn* v. *Lockhart*, 17th Wallace.

Do the appelless contend that the third infant was represented by the other two, after its birth?

Will they contend that this pretended sale was made in the interests of the infants?

Will they contend that here was strict compliance with the law?

In the cases cited by counsel for appellees, it was to the benefit of the infants to have the sale confirmed, and those cases are not analogous to the present, for here manifest injustice will have been done these children if their property is thus taken away.

We insist that in this case, there has been such a noncompliance with the law on the subject as render void the the sale, and makes the title a nullity.

The appellees wholly fail to meet the objection raised by us, that the uncle of these children was not a party to the suit.

By the Code of of 1860, chap. 16, § 17, paragraph 13, p. 115, a word that imports *the singular* may extend and be applied to the *plural*, and vice versa; so that the last part

of § 2, chap. 123 of Code, page 590, will read: "and also where there are infants or insane defendants, all those who would be their heirs or distributees if they were dead."

It is unwarrantable to assert that where there are three infants, *they alone* are to be made defendants. Such a construction frustrates the plain intent and object of the statute, which is to afford protection from loss to the infants' estate, by providing that the persons who would be their heirs or distributees should be parties defendant to the proceeding, to see that justice is done, and the estate not sold wrongfully.

Is one infant, though heir to the other in case of the latter's death, when made a defendant in a proceeding like this, any guard or protection to the other's estate—could he do a single thing to prevent a wrong disposition of it?

But here was the brother of the father of these children, living in Richmond at the time of these proceedings—an adult, known to the widow and her adviser—who was not made, as he should have been, a party defendant to the suit, in order that he might have protected the interests of the estate. (See § 12 of chap. 125 of the Code, 1860, page 591). His absence from the record, and the not making the third infant a party (after his birth) are fatal defects.

The counsel for the appellees indulge in appalling predictions of the direful consequences to be felt for a hundred years, should this court annul this pretended sale. "*Incredulus, odi,*" &c.

There were but few such proceedings during the war, and fewer cases still where courts invested such funds belonging to infants in uncertain, speculative, revolutionary bonds. But we insist, that wherever infants have thus been deprived of their property, where *something* has been taken from them, and *nothing* given in return by decrees of the courts, in utter defiance of the laws of the land, it should be restored to them.

JOHN JOHNS, JR.,
For the Appellants.

No. 248

SUPREME COURT of the UNITED STATES

KNOTTS & ALS.
v.
BALDWIN & ALS.

Brief for Appellants.

There are four grounds on which we ask the court to set aside the decrees of sale and investment complained of on this appeal:

1. *The Circuit Court of Richmond City, Virginia, during the recent civil war, in* 1863, *had no legal authority to make the decrees for the sale, and the confirmation of sale, of the house and lot in the suit instituted for that purpose by the guardian of two of the infants.*

Code of Virginia, 1860, ch. 128, § 1, 2, 3, 4.

2. *Such decrees, even if binding on the two infants whose guardian filed the bill, is not binding on the third, who was not not named in the bill nor a party to the proceeding.*

Code of Va., 1860, ch. 128, § 1.

3. The court had no authority to sell the house and lot as it did, *and the sale was a nullity, being in aid of the rebellion.*

Horn v. *Lockhart*, U. S. Sup. C., Oct. Term, 1873, Amer. Law Times, (N. S.) vol. 1, p. 55.

Sprott v. *U. S.*, U. S. Sup. Ct. Oct. T., 1874, Amer. Law Reg. 1875, pp. 43, 52.

4. *Whether or not before the sale and investment* in Confederate bonds, the court was authorized to act duly in the premises, as against the two infants represented by guardian, its ratification of the investment in Confederate bonds as against the infant not named in the *proceedings, was in*

direct aid of rebellion, and the deed to the purchaser was null and void.

The facts are these:

Edwin Knotts, the elder, died siezed of a house and lot in Richmond city. His widow, Emily J. Knotts, survived him, and at his death there were two children, Annie and Carrie Knotts. The widow was then *enciente* of a third child, Edwin Knotts the younger, who was born after the institution of the suit by the guardian of Annie and Carrie Knotts. The children of Edwin Knotts had an uncle who would be their heir if they died under twenty-one years of age.

These being the facts, the guardian of *two* of the children filed his bill for the sale of the house and lot of land to which the *three* infants were entitled. It is clearly established by the decrees, copies of which are exhibited (record pp. 5, 6, 7), that the after-born child, Edwin Knotts the younger, and the uncle heir, William Knotts (record p. 19), were not made defendants.

In support of the first point.

The power of the court to sell infants' lands in Virginia is simply the creature of the statute. The courts have no further power than as conferred on them by the Legislature. Until the passage of the statutes, it is notorious that no sale of infants' real estate was ever made except under the authority of a private act of Assembly. Tucker P., in *Pierce* v. *Trigg*, 10 Leigh, 419.

The power to sell being derived from the statute, the statute must be pursued. The statute ruling the case here was the statute in the Code of 1860, chapter 128, pp. 589–591.

The terms of this statute are very strict:

1st. The bill must be filed by the guardian of the infants, § 1.

2d. The bill must be sworn to, § 2.

3d. The infants must be made parties defendants, § 2.

4th. The *heirs of the infants*, in case of their death, must be made defendants, § 2.

5th. The guardian *ad litem* (who is to be appointed in addition to their regular guardian) must answer the bill on oath, § 3.

6th. If, after all this, it be made clearly to appear to the interests of the infants, and *the rights of no person violated thereby*, the sale may be ordered.

The first point above mentioned is sustained by the simple citation of the statute. The guardian of but two of the infants filed the bill, and they only were made defendants. Neither the third infant nor the uncle were parties. The sale was certainly made before the third infant was a party, and we think it clear that the third infant was never made a party. See the heading of the decrees, pp. 5, 6, 7, record. And it is also perfectly certain the uncle was not made a party.

This defect of parties vitiated the whole proceeding. The object and intent of the statute would be wholly frustrated if the requirements of making parties to protect the interests of the infants be neglected. If there had been no guardian, the bill could not have been filed. If no guardian *ad litem* the answer could not be filed, and the interests of the infants would be left unprotected.

The statute requires that those who would be heirs of the infants, if dead, should be made parties as an additional muniment and protection and guard against frittering away the property of infants. Every feature of this statute shows the jealousy with which the Legislature watches over the interests of the infants. No one of the steps should be omitted, if the fair intendment and object of the statute are to be carried out.

It is needless to say that a purchaser purchasing at such a sale, at a sale made without authority, in contravention both of the letter and the spirit of the statute, gets no title.

In support of the second point.

But the second point is even more strongly sustained than the first.

As to the third child, there was neither guardian nor nor guardian *ad litem* before the sale, nor was he represented in the proceedings in any way, certainly until after the sale. The absence of this child evinces the "hot haste" with which the whole affair was got up, depriving these children of the patrimony left them by their father.

The effort to show that the child was before the court clearly fails. It is beyond question, from the last decree in the cause, that only the widow and the two children were parties; neither the uncle nor the third child.

In support of the third point.

But, in any event, even had this suit been brought properly, the decrees of the Circuit Court of the city of Richmond entered March 13th, 1863, and May 5th, 1863, the first one ordering the sale of the property, and the second confirming the sale and the commissioner's investment of the proceeds thereof, and directing a deed for the property to be made by the commissioner to Baldwin, the purchaser (page 6 and 7 of the record), were void, and the sale made under them void.

The decree of March 13, 1863, ordered the sale and directed the commissioner to invest the proceeds in Confederate bonds or stocks, &c. The decree of May 5th, 1863, confirmed the report of the commissioner as to the sale and investment of the proceeds in Confederate bonds, and directed title to be made by deed to Baldwin, the purchaser. The second decree of the court adopted the act of its officer and made it the act of the court.

Baldwin bought at his own risk; these decrees were matter of record and notice to him, and he got no title because these decrees were nullities and the sale void.

They were null and void, being acts of the court in aid of the rebellion—they gave money to the treasury of the Confederacy, and proclaimed to the people that Confederate bonds were safe and proper investments. The sale by the commissioner was therefore void and conveyed no title. Nothing could make such a proceeding lawful. "No act done in the service of the Confederacy, or in aid of its purpose," &c., is valid, nor can it be made so, and this was direct aid. We rely on *Horn* v. *Lockhart* (October term, 1873, Supreme Court of U. S.), and *Sprott* v. *U. S.* (October term, 1874, of same court), to sustain our position.

In support of the fourth point.

If possible, the position taken above on the third point is strengthened as against the infant who was unrepresented and who was not a party to the cause. The court, if it acted as to him, must have acted on the distinct question, shall the investment of this child's property in Confederate bonds be ratified? If it answered that question affirmatively, as is sought by the appellants here, it was a distinct and unequivocal rendering of assistance to the rebellion.

IN THE

SUPREME COURT OF THE UNITED STATES.

BRIEF FOR APPELLEES.

No. 248.

KNOTTS, - - - - Appellant,
vs.
STEARNS and als., - Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

STATEMENT OF THE CASE.

Edwin Knotts died in the city of Richmond, Va., in the fall of the year 1862, intestate, leaving as his next of kin and heirs at law his widow, Emily J. Knotts, and two infant children of tender years, Annie Knotts and Carrie Knotts. At the time of his death the said Emily J. Knotts was enciente, and sometime after the 5th day of May, 1863, gave birth to the posthumous child, Edwin Knotts. Edwin Knotts, the father, died seized and possessed of the house and lot in the city of Richmond which is the subject of this controversy, and of a few articles of household furniture. These constituted the whole of his estate. The house was very much out of repair; the roof leaked all over; the basement floors were entirely decayed. The house could not be rented in its condition, and the widow and children had no means to repair it. The widow and children had no means of support whatever, except by selling or renting this house. In the condition of things then prevailing in Richmond, if the house had long remained unoccupied it would have been entirely torn to pieces.

In this state of affairs, Mrs. Knotts applied to Stephen Bowis, Sr., and David Parr, friends of her deceased husband, for their assistance. She procured Mr. Bowis to qualify as the guardian of the two infants, Carrie and Annie Knotts. Mr. Bowis, the guardian, and Mrs. Knotts, the widow, then applied to R. R. Howison, Esq., a prominent member of the Richmond bar, and a gentleman of much experience and high standing in his profession, to file a bill in the circuit court of the city of Richmond for the sale of this house and lot, and an investment of the proceeds in some other manner—Mrs. Knotts herself being entitled to dower, and it being impossible, from the nature of the subject, even if it were desirable, to assign her dower in kind.

Mr. Howison accordingly filed a bill in the name of the guardian of the infants—the usual course in such cases—and Mrs. Knotts and the two infants being made parties defendant to the bill, and a guardian ad litem being also assigned to protect and represent the infant defendants.

The bill was sworn to according to law, as were the answers.

The case was docketed, and an interlocutory decree entered referring the cause to one of the commissioners of the court to make all the necessary inquiries: among others, the inquiry "whether the interests of the infant owners would be promoted by a sale of the said real estate, and whether the rights of any person would be violated by such sale?"

Full evidence of the condition of the property, and of the facts bearing on the inquiries directed by the court, was adduced before the commissioner, who made his report, which was approved by the court; and thereupon, on the 13th day of March, 1863, a decree was entered by the court directing a sale of the said real estate.

David Parr, who consented to act as commissioner for sale without compensation, was appointed to sell the property upon the usual terms of sale—the purchaser, however, to have the option of paying all the purchase money in cash.

The commissioner making the sale was directed to invest the proceeds of sale in bonds or stocks of the Confederate States of America, or *of any State belonging to the Confederacy known as the Confederate States*, or *of the city of Richmond.*

The commissioner of sale, Mr. Parr, had a private offer of $10,000 for the property in the currency of that time and place, which offer Mrs. Knotts agreed to accept; but the court would not permit a private sale, and the property was accordingly sold at public auction on the 5th day of April, 1863, at which sale C. J. Baldwin became the purchaser at the price of $13,800, which he paid in cash. Mrs. Knotts *insisted on having the proceeds invested in Confederate States eight per cent. bonds*, and refused to *have the said proceeds of sale invested in any other way.*

On the 5th day of May, 1863, a supplemental bill was filed, duly answered by the guardian ad litem of the infant defendants, and by the adult defendant. This bill stated all the material facts, and that it was expected that Mrs. Knotts would soon give birth to another child, and that the said child should be made a party to the cause, and its rights protected; and thereupon, the court, on the same day, made a decree approving and confirming the sale made by Commissioner Parr, and the investment of the proceeds of sale, and directing a deed to be made to the purchaser. Said commissioner was further directed to report whether a living child had been born to Mrs. Knotts, as contemplated in the supplemental bill, in order to a further decree. A report was subsequently made showing the birth of a living child, and that his name was Edwin Knotts. A decree was entered on the 7th January, 1864, recognizing these facts, and awarding to him his share of the estate; and then the cause was removed from the docket, with leave to any party interested, for good cause, to move to reinstate the same.

Stephen Bowis, who was already guardian of the two girls, qualified as guardian of the infant, Edwin Knotts, on the 29th December, 1863, giving bond with security in the penalty of three thousand dollars. All these parties were residents of the city of Richmond, and within the jurisdiction of the court. The court making this sale was a court of competent jurisdiction, organized long before the rebellion, and deriving its powers from the constitution and laws of the State of Virginia. The proceeding was one in the usual and ordinary course of business—a necessary part of the machinery of civil society—and in this instance absolutely necessary for the very existence of the infants themselves.

Under these circumstances the plaintiffs filed their bill in the chancery court of the city of Richmond, on the first Monday in January, 1870, praying to have the said sale pronounced a nullity, and that the deed to the purchaser, Baldwin, should be vacated and annulled. The plaintiffs having procured the removal of the case to the circuit court of the United States for the eastern district of Virginia, that court, on the 13th day of May, 1873, upon a hearing of the cause, dismissed the bill, with costs.

From this decree the appeal is taken.

ARGUMENT FOR APPELLEES.

The points made by the appellants in their bill in the court below, and in the brief filed by their counsel in this court, may be resolved into two:

Frst. That the circuit court of the city of Richmond, in the year 1863, had no authority upon a bill filed by the guardian of the infants, Carrie and Annie Knotts, in which they and their mother, Emily J. Knotts, were defendants, to sell the real estate in the bill mentioned, because the posthumous child, Edwin Knotts, was not named in the bill nor a party to the proceedings.

2d. That even if the court had such authority, the investment by the court of the proceeds of sale in Confederate States bonds rendered the sale a nullity, because such investment was in direct aid of the rebellion.

Upon the first point—

The authority of the court is based upon chap. 128 of the Code of Virginia, edition 1860, section 2d. This section and all the laws in force in the State of Virginia in regard to the sale of infants' lands by courts of chancery have been fully and ably discussed and expounded by the court of appeals of Virginia, in the opinion of the court pronounced in the case of Faulkner and als. vs. Davis and als., 18th Grattan, page 651. In this case—the leading case in Virginia upon the subject—the court, after declaring that the statutes for the sale of infants' lands are eminently remedial and should be liberally construed to promote the policy of the Legislature, proceeds to apply the doctrine of the "representation of parties," deciding in substance that in a case within the statute it is only necessary to make all persons in being and interested in the subject, parties to the suit, and the decree would be binding on any other children who might afterwards be born and become interested, and who were sufficiently represented by the children already in being and parties to the suit. The doctrine is one of convenience, founded upon necessity, and is deduced by the court from the statutes themselves and from previous decisions of the same court. See

Baylor's lessee vs. Dejarnette, 13th Gratt., 152; Cooper vs. Hepburn, 15th Gratt., 551.

As "it is undoubtedly true in general that this court does follow the decisions of the highest courts of the States respecting local questions peculiar to themselves, or respecting the construction of their own constitutions and laws," as was said in Olcott vs. Supervisors, 16 Wallace, 687, it follows that the circuit court of the city of Richmond did have authority to decree a sale of the real estate in said city, upon a bill brought by the guardian of the infants, Carrie and Annie Knotts, to which bill the said infants were made parties by name, a guardian ad litem having been appointed by the court to protect their interests, and their mother, Emily J. Knotts, being also a party defendant to the bill: and this, notwithstanding the fact that the unborn child, Edwin Knotts, did not come into existence until after the decree for sale was made. He was represented by his sisters and his mother, and the decree, upon the principles of the cases cited from the court of appeals of Virginia, was as binding on him as on them. Nor was it necessary to make the uncle of the infants a defendant—the statute does not say, as asserted in the brief of the appellants, that the heirs of the *infants* must be made defendants. It says, "where there is an *infant* defendant, all those who would be *his* heirs if *he* were dead." Sec. 2, chap. 128, Code of Virginia, 1860. As one infant would have inherited from the other, the statute is satisfied by making both of them defendants, and such has always been the practice, and such the judicial construction of the statute.

In this case, in the absence of the record in the case of Bowis, guardian vs. Knotts and als., the defendant might well have contented himself with invoking the application of the maxim: "Omnia praesumuntur rite esse acta"—for notwithstanding his prompt, full and responsive answer to the bill denying explicitly every allegation of irregularity in the proceedings, or want of authority of the court to make the sale complained of, the plaintiffs in the court below (the appellants here) neither produced nor offered to produce, any evidence to sustain their bill; and this, too, although more than three years elapsed from

the filing of the answer of Baldwin to the dismission of the bill by the circuit court.

"There is no principle better settled than that every act of a court of competent jurisdiction shall be presumed to have been rightly done till the contrary appears." Harvey vs. Tyler, 2 Wall., 344.

Four decrees in the case of Bowis, guardian vs. Knotts & als., escaped the great fire of 3d April, 1865, which consumed so many buildings in Richmond, including the State courthouse, occupied in part by the circuit court of Richmond—all the other papers and proceedings in the case were lost.

From one of these decrees, dated May 5th, 1863, which appears in the printed record at page 7, it appears that a supplemental bill was that day filed, contemplating the birth of a posthumous child, and the decree directed a commissioner to report, after July next following, whether a living child had been born to Emily J. Knotts, as contemplated in the supplemental bill, and the name of the child, in order to a further decree. On page 8, of the printed record, the decree of January 7th, 1864, appears, in which the report of the commissioner is referred to, and the name of the third infant is given as Edwin Knotts, and his interest in the proceeds of sale is fully protected.

It appears, then, from what remains of the record, that the existence of the infant, Edwin Knotts, was recognized as soon as he came into being, and his share of the proceeds of sale decreed to him.

But the defendant, Baldwin, to sustain his answer, examined as witnesses David Parr, the commissioner appointed by the circuit court of Richmond to make the sale, and R. R. Howison, Esq., the counsel who conducted the suit on behalf of all the parties. His testimony, as given on his examination in chief, which will be found on pages 21, 22 and 23 of the printed record, gives a very full and complete history of the suit; he fully sustains the answer of Baldwin, and supplies, by his clear and connected narrative, the contents of the lost papers of the suit.

The testimony of Mr. Parr is also important, as showing the residence of the parties at the time of the proceedings now complained of;

their destitute condition; the uninhabitable state of the property; the inability of Mrs. Knotts and her children to repair it; the necessity of sale; that Mrs. Knotts was urgent to have it sold; that she was willing to take $10,000 of Confederate treasury notes for the property at private sale; the caution and care shown by the court, as manifested in its refusal to allow the property to be sold privately; the large price which the property brought at public auction; and, finally, the refusal of Mrs. Knotts to have the proceeds of sale invested in any thing else than Confederate bonds. See his testimony, pages 16 to 20 of printed record.

It thus appears that these proceedings were had in a court having jurisdiction both of the persons who were interested in the property and of the property itself; that the court was a court of the State of Virginia, organized years before the Confederate States had an existence of any sort; that it was presided over by a judge elected long before the civil war; that neither court nor judge derived their powers from any other source than the State of Virginia; that in taking cognizance of the suit for the sale of this property it was exercising a common and ordinary part of its jurisdiction, conferred upon it by the statute of the State; and finally, that the exercise of its jurisdiction in this case was eminently proper, highly beneficial to the infants at that time and perhaps necessary to their existence, as they had no means of support.

In Texas v. White, 7 Wallace, 700, the supreme court of the United States lays down the rule, "that all acts necessary to peace and good order—such, for example, as acts sustaining and protecting marriage and the domestic relations, giving the course of descents, *regulating the conveyance and transfer of property*, and providing remedies for injuries to person and estate, and other similar acts which would be lawful, if emanating from a lawful government—must be regarded in general as valid, when proceeding from an actual government, though unlawful." This decision does but affirm the well-settled rule of international law. And the act of the Legislature of Virginia, passed Feb. 28, 1866 (sess. acts, 187), is also but an affirmance of this humane and necessary rule of the law of nations, which demands that the municipal and domestic

affairs of a nation shall not be disturbed or deranged by war further than is absolutely necessary.

It was not only competent and proper, therefore, but absolutely necessary, that the legal tribunals of the State of Virginia, during the late war, should continue the exercise of their legitimate functions, and their acts, within the scope of their authority, are valid and binding by the law of nations, as well as by the express language of our statute.

One of the powers and duties devolved by law upon the legal tribunals was to dispose of the rights of infants in real estate, whenever the court should be satisfied that the interests of the infants would be promoted by such disposition. This power was conferred upon the court *for the benefit of infants*, as is clearly shown by the history of the law. And it will not be denied that the exercise of this power may be as necessary and proper during time of war as in time of peace. During war not merely the *interest* of an infant, but his very existence, may demand that his real estate be sold, and the proceeds invested in more productive property. This important power "for regulating the conveyance and transfer of infants' property" is, therefore, not suspended during war.

Upon the second point—

Neither the sale nor the investment was in aid of the rebellion. Surely it will not be pretended that there was any purpose on the part of the circuit court of Richmond, or on the part of anybody connected with the suit, to lend any aid to the rebellion in making sale of the property, or in investing the proceeds of sale. It was merely an incident in the ordinary and usual course of business, as necessary in time of war as of peace. Sales and contracts made with reference to Confederate States treasury notes as a medium of payment, when made during the ascendency of the Confederate government, at a place within its control, not being made in aid of the rebellion, are valid and binding after the restoration of the legitimate authority. Thorington vs. Smith, 8 Wall.

What is there in this case to take it out of the general rule? The investment in Confederate bonds was no more in aid of the rebellion

than the receipt of the purchase money in Confederate notes. The Confederate treasury notes and the Confederate States bonds were both but *promises* of the Confederate government to pay money, and they were equally binding and equally worthless.

How does the exchange of one class of Confederate promises for another class, both constituting a circulating medium, render the sale a nullity?

Confederate States bonds were as common on the streets of Richmond during the war as Confederate States treasury notes. If the papers of the suit were in existence, it might appear that the commissioner making the investment purchased the bonds, not from the Confederate government, but from some private person. In any event, he could not aid the rebellion by investing worthless paper in worthless paper.

This question has been repeatedly decided by the supreme court of appeals of Virginia. Says that court, in the recent case of Walker's ex'or and als. vs. Page and als., 21st Gratt., 642: "That the courts of this Commonwealth during the war had the authority to decree sales for Confederate money, and to make investments of funds under their control in Confederate securities, is no longer an open qnestion. It is definitively settled by legislative enactment, by repeated decisions of this court recognizing the validity of such decrees and investments, and by the supreme court of the United States. Transactions in Confederate currency during the war, and investments in Confederate securities (when properly made), must now be held to be as valid and binding as if made in times of peace in a sound currency. To hold such transactions null and void, would unsettle half the titles to real estate throughout the Commonwealth, and would beget universal discord, confusion and chaos."

The subject matter of the case from which this quotation is made, is almost identical with the case of "*Bowis, guardian*, vs. *Knotts and als.*" It was a bill filed by a guardian making the widow and *two* infants defendants. It was filed for the sale of infants' lands about the same time and in the same circuit court of the city of Richmond, and in that

case, as in this, nothing was preserved except a few decrees remaining on one of the order books of the court.

But if this court shall not regard the case just cited from the supreme court of appeals of Virginia as conclusive of this case, then it is further submitted that the decree for sale gave on its face to the commissioner making the sale the option to invest the proceeds of sale either in Confederate States bonds, or in bonds of *any State* adhering to the Confederacy, or in bonds of *the city of Richmond*, and that the discretion thus given to the commissioner was controlled by Mrs. Emily J. Knotts, who had a dower interest in the proceeds of sale, and who was the mother and natural protector of these children. The record shows that she *refused* to have the proceeds of sale invested in any other securities than Confederate States eight per cent. bonds. Surely it is against equity and good conscience to allow her now to visit upon an innocent purchaser the consequences of her own voluntary act, over which he had no control.

It is further respectfully submitted, that section 7 of the statute before cited, imposed on the court *the duty of investing the proceeds of sale*, and that Baldwin, the purchaser, was not only not bound to see to the investment, but in truth had no right whatever to interfere with it. He had no interest whatever in it, and if he had attempted to interfere would have been regarded and treated as an *intruder*. Guigon's lessee vs. Astor, 2 How. U. S. R., 319; Schriver vs. Lynn, 2 How. U. S. R., 43; Potter vs. Gardner, 12 Wheat., 498; Daniel vs. Leitch, 13th Gratt., 195.

The case of Horn vs. Lockhart, decided by this court at its October term, 1873, has no application to the case at bar—that was a case in which the executor was held personally liable for money of the estate voluntarily invested by him in Confederate bonds, the estate having come to his hands in the year 1858, and no reason being given for his delay in settling. This is the principle of the case of Campbell's ex'ors vs. Campbell's ex'or, decided by the supreme court of appeals of Virginia in 1872. 22d Gratt., 649.

The other case cited in the brief of the appellants, of Sprott vs. United States, does not apply to the case at bar.

The precise point decided in that case was, that the Government of the Confederate State could not sell cotton to a purchaser for United States currency, because the necessary consequence of the transaction was to raise money in direct aid of the rebellion. For the sake of gain the purchaser knowingly and substantially contributed to the vital necessities of organized treason, and made an immoral contract; but the court expressly discriminates and distinguishes such a contract as this from acts done in pursuance of laws necessary in their recognition and administration for the existence of organized society.

It is confidently submitted that there is nothing in this case which should take it out of the benificent operation of the wise and humane principles laid down in the case of Thorington vs. Smith, cited above.

The application of any different rule in this case, upon the ground that the investment by the circuit court of the city of Richmond of the proceeds of sale in Confederate States bonds was null and void, would breed in the State of Virginia, and throughout the Southern States generally, such universal litigation and such great calamities, as would be felt for a hundred years to come.

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